

JISC Legal Webcast - Copyright & e-Learning - 22 March 2006 - Transcript



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Introduction – Jason Campbell

Good afternoon and welcome to this, the first JISC Legal webcast on Copyright and e-Learning, coming from the University of Strathclyde here in Glasgow.

Well, my name's Jason Campbell, I'm the Service Manager at JISC Legal and JISC Legal is a service that hopefully stops legal issues being a barrier to your use of technology in further and higher education.

This afternoon we're going to take you through copyright and how it pertains to e-Learning. First of all I will be giving you a 20 minute introduction to Copyright and e-Learning.

After that we'll have Alan Ray who is with us in the studio and he will be telling us about the blanket licenses that might be of use in the area.

At 2.40 we'll look at some frequently asked questions. Here at JISC Legal we get a number of enquiries each year and we've distilled these into the ones which are most commonly asked about Copyright and e-Learning, and hopefully we'll answer those questions for you.

At 2.50 we have Jim MacNeillage from the Copyright Licensing Agency who will speak about the CLA Trial Scanning and Copyright Licenses, in some ways the most important licenses in this area.

At five past 3 we'll appreciate you might need to fill your coffee cups and so we'll give you a break until 3.15. At 3.15 we'll look at some questions that you've put in to us. During this afternoon we hope you will use the facility available to you, hopefully on the screen below you will see a form, a question

form that you can go to which will allow you to put questions to us. We won't mention your name or institution, so please be candid about any problems that you have or any questions that you want to ask. You can also email us at webcast@jisclegal.ac.uk.

Betty Wilder will be putting questions to Alan Ray in that section at 3.15.

At 3.25 we'll deal with the more particular issues of multimedia and copyright, how to spice up e-Learning beyond simple text.

At 3.35 we'll look at using broadcast recordings in e-Learning.

And finally, at 3.45, Alan Ray, Jim MacNeilage and myself will form a panel to deal with any further questions that have come up during this afternoon.

As I say, its important for you to participate and to get your questions in, and please do so using the form or webcast at jisclegal.ac.uk.

I must point out that JISC Legal is a legal information service. That means we cannot supply legal advice, and so when you are faced with a risk-bearing decision we cannot take that decision for you. We can inform you as to the legal factors that will be involved and the law that underlies it, but if you have a risk-bearing decision that you need specialist advice on you have to see a legal adviser in that situation.

We do have an evaluation form as well for you to fill in. If you drop out at any point during this afternoon we're still interested to hear what you have to say, or, if you sit with us for the whole two hours by all means fill in the evaluation. Anyone putting in their evaluation form from the FE and HE sectors will be entered into a draw to win an Apple iPod Shuffle. So please, hopefully that makes it worth your while in order to get a bit of extra music, please return the evaluation form.

At the moment we'd appreciate it if you've got time, or if you're in a situation where you can do so, use the question form below to send in a quick 'hi' to us. Give us your name and institution, it's just a way of us knowing how many of you are out there, and from what sort of background that you're from. So hit that button there for the question form, it will come up in a new window on your browser, and return a quick 'hi' to us, that will be fantastic.

Moving on then into the first subject area, Introducing Copyright and e-Learning. I'm going to cover six things during this presentation. First of all, what is the importance of copyright, why does it matter?

Secondly, what is covered by copyright? What materials are covered?

Thirdly, what does copyright stop me doing as a tutor or lecturer in a college or university?

Fourthly, who owns copyright and for how long do they own copyright.

Fifthly, a look specifically at copyright and particular types of materials and how one can practically use those materials therefore.

And finally, a look at relevant defences, permitted acts and exceptions which may help in academia.

Turning then to the first of those, the importance of copyright. I think first of all it's about quality. The idea of using other people's materials without their permission is one that is not particularly good quality-wise, and perhaps the greatest impetus for people ensuring the quality of their materials will be when quality inspectors in whatever form come into an institution and say "excuse me, these materials you've shown me, they aren't entirely yours. Do you have copyright clearance to use these?".

That's not going to look good to quality inspectors. You will want to have confidence that your materials are robust and that they can stay there and the implications of having to take down materials potentially at the last moment is not particularly pleasant and not a situation you want to be in.

Secondly, you can have confidence in that the materials are being used properly, you have confidence in perhaps the commercial nature of the materials later on, and the confidence in knowing that you can actually use other people's materials. That confidence is worth an awful lot. Thirdly there's a financial benefit. If I look at my career and go back a little bit, I was a lecturer in law for 10 years, and looking back I probably didn't make the best use of copyright. I in fact wrote an awful lot of materials where I could have used other people's materials if I'd thought about it, and if I'd taken a little bit of time. Of course my time costs money, and again we've perhaps had situations where the wheel has been reinvented and the quality of e-Learning materials suffers because materials are being written from scratch rather than innovative interactive elements being added to e-Learning materials, so there's that financial benefit.

Another side of the financial part is of course the possibility of infringement in an action. Of course this is going to harm the reputation of an institution, and it's not really a place an institution wants to go. It may actually lead to some licenses being withdrawn which would not be an easy situation for an institution, and also there are examples, for example the reported case of the University of Sheffield versus Siprotex and now thankfully the university in that case won the case, but it was an argument over the copyright on software. Now, the amount of money that was written off by Siprotex in the final accounting of that company was a quarter of a million pounds, and therefore we can see that in the end, in particular cases, copyright infringement and the copyright implications, and indeed the legal bills can be very high, and that's a situation you would want to avoid.

Finally, it's about good practice. We're all in seats of learning and colleges and universities must be in a position where they send out students, learners, that have picked up good practice, and certainly students learning from

materials which are infringing copyright, and therefore infringing the law, is not good practice. One thing that we've certainly found is that if we get some academics started on the subject of plagiarism they're very quick to say that students should not be using other people's work without acknowledgement, and indeed the same principle does apply in education and that means that tutors and lecturers wanting to use other people's work have to make sure that that's done so with the proper permissions. So there we have it. I think the question there is about quality of materials, and making sure that they're robust.

So what's covered by copyright? Originally literary, dramatic, musical and artistic works are covered. Sound recordings, films, broadcasts, and cable programmes are all covered. In addition to this we have what are known as typographical arrangements, the way that text is laid out on a page. There can be multiple layers of copyright. For example, I may take some text and arrange it for publication. The original author still holds the copyright, has the right on the text. However, I will have the right in the way that it has been laid out in the publication. And likewise with films there can be multiple layers of copyrights, and more will be said about this in the subjects and in the segments later on, on multimedia and on e-Learning and on recordings and e-Learning.

It should be noted that copyright is automatic. You don't need to apply for copyright, you don't need to register the work, it's there automatically. Also, in most countries of the world, you don't need to put any sort of notice or any sort of symbol. Of course the copyright symbol the 'C' with the circle, does appear quite often, and that serves as a reminder more or less that the material is copyright and may state who the copyright holder is, or at least was at the time of publication. Of course we sometimes use it badly in that we put the year of the publication next to the copyright symbol. In fact the year of publication generally does not affect how long copyright lasts for. But it's a useful way of keeping track of when it was last updated or when it was published of course.

Do look out for copyright notices, they're very useful and indeed if you're making up materials which go out to a broader audience you may want to make sure you have a copyright notice which states what the materials can be used for.

So, what does copyright stop you doing then in FE and HE? Well the answer is, really very little, if not nothing. There are various restricted acts that you can only do if you have the permission of the copyright owner or if you are the copyright owner yourself. That's not to say you can't do them, but you must get the permission. The permission in law is known as a licence and it can come in various ways. You can get permission by directly asking the person and getting an answer back, and that doesn't have to take any particular legal form. You can do it through blanket licenses also, broader licenses, and we'll come back to that in the second segment with Alan Ray on the blanket licenses that pertain in FE and HE.

So what are the actual acts then you have to beware of when you're talking about copyright?

Well first, and most importantly, there's copying itself. And copying is very important. We're all used to the photocopier and the fact that the sheets come out at the end of the photocopier are reproduction of the book or the journal or the bit of paper that's inside the photocopier.

In the digital world we have to be a little bit more careful because any transfer of a file, any uploading of a file, downloading of a file, it amounts to copying and indeed the transfer in any way of a digital file is generally a copy, so copying is covered by the restricted act. Secondly, issuing copies to the public, making it available is an act which is restricted to the copyright holder or can only be done with the permission of the copyright holder. The right to lend the work to the public, the right to perform, show and play the work to the public, the right to broadcast to the public, and the right to make an adaptation or a translation of a work, is also left to the copyright holder or must be done with the permission of the copyright holder.

In addition to this we have the communication to the public right, which is the right to make works available on the internet in particular. If you want to do one of these acts with material that is not yours in terms of copyright, then you must get the permission of the copyright holder, with a few exceptions which are contained in the relevant legislation.

So, looking at copyright and materials then. There's two situations. I'm going to deal with the first situation where an academic, a tutor or lecturer, is developing e-Learning materials and wants some material. They've got the outline of their perhaps learning that they want to get the learner to get through, but they want to include some multimedia elements, or some illustrative materials, rather than any particular text.

I think there are some particular guidelines here that are helpful. First of all its possible to use 'out of copyright' material. Certainly I've come across the situation where a lecturer spent quite a while trying to trace the copyright holder for a work that was issued in the early 19th century. Of course, they'd missed the point that if they had of made a few more enquiries they would have found out that that material was actually well out of copyright now, and so could be used. It was published back then, of course one still has to be careful, there can still be a right in the typographical arrangement if a particular copy of that work was published recently then the way the text is laid out in this new edition may carry typographical right. But 'out of copyright' material is certainly one of the ways.

Secondly, there is material which is released under open licence. Now in law an open licence isn't defined. Open is not a legal term, it just tends to mean a licence with few restrictions. That doesn't mean that there are no restrictions, and in fact a German company in the autumn of last year was sued in London for breach of copyright for breaching an open licence. He had in fact gone on

to use a certain piece of software commercially in a way that wasn't allowed under the licence.

So open licence conditions must be complied with. However, and I will point out here that we are part of the JISC organisation and JISC itself negotiates on behalf of FE and HE to provide a good number of materials that are made available under relatively unrestricted licenses, one could call open licenses. For more information go to www.jisc.ac.uk/ .

There are a few copyright exceptions contained in the relevant legislation. That's the Copyright and Patents Act of 1988. There's not too many of these that are helpful to us in fact in FE and HE. There's one for general educational reasons, general instruction, but unfortunately it is limited to non-reprographic copying. In other words where you're not making an exact copy. And unfortunately digital copying for e-Learning purposes is always going to fall under reprographic copying, so that doesn't help us.

In terms of examinations, I'll come back to, we do have some help within the Act, and there's perhaps a few other areas that we'll come back to.

Finally, we have a number of blanket licenses which help us to various degrees and Alan Ray will go into these in some more depth and also Jim MacNeilage later on in CLA Scanning and Digitisation Licence. These are not transactional licenses in that you don't have to worry about them each time that you make a copy, you don't need to go back to a rights holder. These cover a range of activity and therefore speed up the process and speed up the confidence that you can have that you are actually complying. So blanket licenses are a way to do it. So that's general content, use 'out of copyright' material, use an open licence, use the copier acceptance or use the blanket licence.

What about if a tutor wants specific content, they have an article they want to use, they have a photograph or a picture, then how are they going to do that? Well first of all check that it's in copyright. As I've mentioned before, if it's out of copyright you're not going to have a problem.

Secondly, check that one of the exceptions applies within the Act, if its being used for assessment for example then it may fall under the Examination Exception.

Thirdly, check to see whether a blanket licence applies in that particular instance. For example, now digitisation of text may well be permitted under the CLA Digitalisation Licence, if the institution holds that licence.

Its also possible to obtain permission directly by going to an organisation and asking 'can we use this in this particular situation?'. The licence permission doesn't have to be given in any particular form. Lawyers aren't needed to sign documents and to register documents. It's about getting the permission.

Of course you have to take a decision as to the amount of risk involved in your activity and to what extent you want to have an auditable trail of permission, and that's something for you to decide and there may be a difference between using a fairly abstract random graphic, which isn't particularly distinctive, to using a well-known piece of either photograph, a photographic image, or a piece of music or part of a film or some text indeed, in which case you might want to keep a written record of the permission that you have got with regards to this.

We'll come back to later on, but certainly the experience of applying for particular permissions can be a mixed affair, sometimes very lengthy, and sometimes very quick. Overall the message there is do not ignore copyright. That's putting up materials which are not copyright-cleared is in a way theft, but what's more than that a tutor or academic doing so is going to leave themselves in an area of uncertainty as to their materials for future use, and that's not a situation institutions want to be in.

There's the question of who owns copyright indeed, and it's quite an important point. Copyright is generally owned by the author or the creator of a copyright work. However, in our situation the exception is often the case, and that is contained in section 11 of the Copyright Designs and Patents Act. That says 'where a person is an employee creating materials in the course of their employment the first copyright owner will in fact be the employer'. Now, that means where a tutor or lecturer creates materials in the course of employment, that material will belong to the college or university.

Defining the course of employment can be quite difficult and there are certainly issues there, and that's something you may wish to ask questions about.

There are a few defences and exceptions. First of all, for the purpose of instruction, we have an exception, but as mentioned it doesn't apply to reprographic, exact copy, so it's not really relevant in the digital world. For examinations, in terms of the setting of questions, communication of questions, and answering of questions copying is permitted and that's quite a wide exception with regards to examinations, but it can only be used for examinations purposes, not for teaching next year's class. One is allowed to perform, play, or show work at the establishment and not to the public. And there's also an exception that applies to media studies students with regards to showing them how to make films and how to make soundtracks.

To summarise therefore, in order to do the restricted acts and in particular copying, one has to either be the copyright holder or have the permission of the copyright holder. There are a few exceptions which may apply but these are fairly restricted. With that we're going to look a little bit more in depth at the blanket licenses that may help tutors and academics in FE and HE, and with that I'll hand over to Alan Ray.

A Practical Guide to the Blanket Licences with Alan Rae

Good afternoon, thanks very much Jason. I'm delighted to be here this afternoon. I'm here representing the Association of Scottish Colleges, I do some work for them on a part-time basis and actually employed at Dundee College on the east coast of Scotland.

I'm here this afternoon to try to give you some kind of insight into the blanket licenses and what they're doing at the moment, the major licence source with regards to e-Learning, so I've got a presentation I'd like to take you through here, and we'll start off with what I call the Actual to Virtual.

The analogy here is that we've moved from the original blackboard, complete with pieces of chalk and duster, which were often thrown at recalcitrant students and we've moved now onto the digital version, the blackboard being a form of virtual learning environment. Part of the difficulty as I see it is that we've moved from the sublime to the ridiculous, we've moved from the simple to the complex, and it comes down to the fact that irrespective of whether you're using a blackboard or a digital blackboard copyright is still extremely important. In actual fact I think you'll find that there's a movement some place in deepest academia to move back to the original blackboard because its one of the few ways in which you can actually copy out vast tracts of somebody else's material. For those of us who have ever sat through that its not a lot of fun.

So I want to move onto our good friends, Jim MacNeilage will be with us shortly, and I want to...I'm sure Jim won't take any offence at that at all, we get on extremely well, and in recent years Copyright Licensing Agency probably more than any of the others are very happy to talk and communicate. We don't always get what we want, but at least we talk and communicate. And what I want to do here is just have a quick look, let this one run through...what we can do under the terms of the licence. Now, the time available this afternoon doesn't let me go into the detail. You wouldn't want me to go into the detail. But what we've got here, at the moment we can do paper to paper under the photocopying part of the licence. We can still do paper to acetate. Now, that may be regarded as a bit low tech these days, but that was a significant improvement in previous licenses where we weren't allowed to copy onto acetate, but we got that one in just as the technology was disappearing, and we've got paper to file, and that's the one now that's covered by the scanning part of the licence. In further education we're still working to a trial licence, but in higher education this has now been incorporated on an opt-in basis with higher education establishments.

So that's what we can do. What we can't do unfortunately is much more important, to all the things that we'd like to do. We're not allowed to copy from websites under the terms of the CLA Licence. We can't copy from CD ROMs under the terms of the CLA Licence, and we can't edit, amend, manipulate, add to or delete from digital copies, under the CLA Licence.

Now, it's possible that you may be able to do all of these things but not under that licence. You'd need to get another licence or another permission, and it's the website one that's really causing a lot of difficulty these days. In my job I'm asked a lot by colleagues "wouldn't it just be so simple to just to make a number of copies from this website, run them off for the class?". Sorry, unless you've specifically got permission from the person who is running the website, and that poses all sorts of difficulties, unless you've got that permission you're not covered.

Now, I know that we've discussed with the CLA this ability to copy from what's called 'born digital', the CDs the DVDs, websites and so on. And we've talked, and we will keep talking, but at the moment I'm not clear just what we're going to be able to do, and I'll come back to that later because I think I have an explanation, but it's not one that anybody's happy with.

So these are some of the things that we can't do, and we can't do any of these either. We can't place anything that we scan onto the World Wide Web. In further education, under our trial licence, we can't use optical character recognition software, we've got to use bitmap software. Now that brings with it all sorts of constraints. It doesn't work out particularly well. Big file sizes. And of course the reason that we're supposed to use that, as opposed to any other form of software is that we come back to the point that I've just made previously about no editing, amending, manipulation and so on.

Higher education have negotiated the use of optical character recognition software in their licence, but they pay more and it's a considerably more complex licence, and I'm not sure that I want to merge the two somehow. The other thing that we can't do is copy, disseminate, publish, communicate, make available, re-package or distribute.

We've got a certain amount of leeway within the colleges and universities to copy digitally and move from one file to another, but basically what this is coming down to is a point that Jason raised earlier about the re-packaging, the re-publishing, particularly for commercial purposes. We're just not allowed to do that.

So if I move onto our friends at the ERA, and I'm sure we don't fight with them too much either, although there is a bit of an interesting dispute brewing with them, and I'll touch on that just in a moment. We have a relatively good history with the Educational Recording Association. They're the organisation who have got the mandate from quite a number of rights holders, the BBC, ITV, Channel 4, Performing Rights Society, now the Phonographic Performance, Musician's Union, anybody who contributes to the making of a broadcast, and they're licensing us in colleges and universities to record programmes principally from terrestrial television. And what we've got here, what we can do is that we're able to record the licensed programmes, we're able to make copies and we're able to digitise and view in the college. Now we've always been able under this licence to record the licensed programmes, those that are set out in the Radio Times, and there's actually very few restrictions. We're allowed to make copies of those. Again, if we can

justify that a copy is required for curricular purposes in different departments, we can record whole programmes, catalogue them, put them on the shelf, and everything's fine.

Recently what we've been asking to do, and we're now allowed to do it, is we're allowed to digitise programmes. We're allowed to record them and put them onto DVD. We can store them on a server. What we can't do, and this is the real bugbear, is we're not allowed to view them outside college or university. Now, at the moment the argument is the ERA are restricting us purely to the showing of digitised programmes within the physical fabric of a particular building. Now we've won the argument that a number of colleges and universities are actually located over a number of sites within the same city, and they've reluctantly yielded to that. The big problem is coming with what we can't do. We can't allow programmes to be viewed outside the college or university building. We're also not allowed to copy purchased or bought content. So if you go down to your local video shop or you buy from any number of the video suppliers that there are on the market in the academic world selling video and DVD these days, we're not allowed to copy their materials.

We're not allowed to post anything that we record or digitise onto the web, but we can do it onto our VLEs as long as they are viewed within the college buildings. Now obviously for those of you who know anything about VLEs that's a nonsense, because the whole point of this, the whole point of VLE is that we're extending the access of education to our students. So what are the ERA doing about this? Well they've come up with a grand new scheme, provisionally entitled ERA Plus, and what this will do is allow us to do exactly what I'm talking about, put out the VLE and have remote access. It will have to be controlled at different stages, username, password, and perhaps even a third level of access, but we're not sure about that one yet because we can't get over how we're going to implement this and how much its going to cost us. At the meeting in London just prior to Christmas I was there representing my association along with representatives from the UK Universities, and the stakeholders from ERA and they started the bidding off at 50% uplift on what we're already paying for our licence. That was met with an interesting response round the table, whooping and cheering on the side of the rights holders and groans and horrible noises on the side of the users. Not quite sure what's going to happen with this one.

The reason for all of this again comes back to the point Jason mentioned earlier, we've now got under a recent European directive, the right of communication, and effectively what this means is that we want our viewers to view material at a place and time to suit them and draw down from the server. So if they're sitting in the comfort of their own home or they're in an outreach centre some place and they're taking part in a particular course that we're offering them, they are then able to view the materials as and when they see fit. It's if you like pay-per-view. Those of you who subscribe to satellite television and get involved in pay-per-view you'll know what's involved there. You get premium services you've got to pay for it because you're calling up at the time that suits you, not at the time it suits the broadcaster.

So it's going to be interesting over the next little while to find out just exactly what's going to happen with ERA. They've been very good up until now, they're very good at allowing us to digitise, they've never actually not allowed us to digitise, but the future is going to be interesting there.

Just to take a moment there just to remind users of video material that it doesn't just have to be video licensed by ERA that you would use in your VLEs and any teaching packages. There are a number of JISC-funded projects where there's education media online, if I've got the name correct, which is extremely useful. Now it doesn't carry a full bank of materials that you might want to use on a day-to-day basis, but it's certainly worth looking at and you don't need an ERA licence for that because your institution subscribes.

Move onto the third licence which I think for most people is the next largest, certainly in money terms where we pay out, and certainly in the most contentious aspects as well, and I think perhaps the analogy of the box that's here is perhaps more appropriate. The Newspaper Licensing Agency the NLA are an interesting organisation that grew up out of the Daily Telegraph syndication system from a few years ago, and now all newspapers subscribe to them, virtually all newspapers. There's the classic example up in Dundee of the august body of DC Thompson's have nothing to do with people like this because they're in England I think. Anyway, they have nothing to do with them but DC Thompson's are very easy to deal with when you want copyright material and you want it cleared.

What can we do with the NLA Licence? Well, we can copy editorial and I'm sure that everyone who has an NLA Licence knows that you're not supposed to copy the ads or the photographs, because NLA don't have the mandate, either from the photographers or from the advertisers to allow us to do that. We are allowed to make copies. We can make lots of copies. I think the limit from memory is 250 copies of any one particular article. But what we can't do, and where we have a really interesting anomaly, bizarre anomaly I think, at the moment, we can't copy from online papers under the NLA Licence. We can't digitise onto a VLE from the NLA Licence and we certainly can't post to the World Wide Web using the NLA Licence. Now, the big difficulty here in my mind is that we're trying to move away from paper, we're trying to digitise and if you have an NLA Licence and you want to copy from a newspaper you perform miracles on a photocopier. You either do your best in origami, folding it up and sticking it down, or you actually cut the newspaper up, put it onto sheets of A4 and stick it through the photocopier. Now, the sensible thing would be, in my opinion, to go to the online site, and granted not all online sites have the entirety of the newspaper on that site, but you might find the article you're looking for, and the simple idea would then be to print that off and make multiple copies. But you can't, because you're not allowed to, not under the NLA Licence.

If you get in touch with the newspaper's Syndication Department, chances are they will allow you to make those multiple copies but you will have to pay a

separate fee. You'll have to take out subscription. Anyone who has tried to access for example The Scotsman online in recent weeks and months will discover now that it's a subscription system. For a long time it was free, and you were able to, for individual purposes, make copies. Now, if you want to do anything at all, even for individual purposes, you've to subscribe and there are always different levels of subscription.

So here we are almost going back full circle with the newspapers, where prior to the introduction of the NLA we had to deal with individual newspapers to get their permissions. I've still got stacks and stacks of files showing all the nice letters that I got back from newspaper publishers, some granting, some not granting.

Then the NLA came along. We don't get to negotiate with them so we have to take the fee that they give us. That's all very well, I'm not happy about it obviously but at least we have a licence, we don't now have to go around everybody, and obviously that's the essence of a blanket licence. However, NLA can't seem at the moment to get the mandate from their publisher members to put the online material into the licence, so we're now back to having to go to the individual publishers to the syndication department, and ask for permission. That's what you're supposed to do. Now I know that not everybody does it, but again, to paraphrase something that Jason said earlier, something that we must always be very clear about is that in education we must be seen to be doing the right thing. If we don't show our students and our learners what to do and that we're practicing properly, what hope do we have of them going out and practicing the correct way of doing things?

So that's the NLA. My concerns, now that could be your college or your university, my concerns is that we've become more digital and we get into the wonderful world of cookies and online spying mechanisms and so on, who is watching, who is counting, who is monitoring? Who knows what's being done? And importantly how will surveys be done in the future?

Now Jim MacNeilage is from the CLA, who we'll be talking to shortly and he might be able to cast some light on this. I certainly have some concerns myself about how surveys will be done with the scanning licenses. I've got real concerns about how some of our work will be policed in the future. That's a much more detailed discussion, we might get into that in question and answer.

So where are we going? Well we're going into the future. And what is the future? If we had that crystal ball. Is it bright? Is it orange? Probably get sued for that. Is it more expensive? Almost certainly, and it is going to be considerably more complex. We're getting to the stage where if its digital you pay for it, if its digital it can be monitored, if its digital it can be counted. And I'm really concerned about the complexity of many of the licenses. A licence is a contract and many of the contracts are becoming incredibly complex. As I said earlier, the higher education digital licence offers more to higher education than it does to further education, but they are quite similar in many

regards. Our licence fits onto two sides of A4, the HE licence fits onto something like 20 sides of A4. That worries me.

It also worries me that other licensors that I haven't mentioned this afternoon, but we'll go through very quickly just now, particularly the music licensors. Just last week the MCPS, the Mechanical Copyright Protection Society who licence the change of medium. So if you're recording music you're supposed to have a licence from them. For example, if you work in a video studio and you record music onto tape or a DVD as a soundtrack you need to have an MCPS licence. It's a very cheap one, they've got very good educational ones, but if you're doing it commercially it starts to get much more expensive, but they, along with the Performing Rights Society, PRS, have suddenly sprung up out of the woodwork and they're crawling all over Podcasts now, because Podcasts are likely to be used as a means of distribution, albeit web-based, but that isn't everybody using that these days, and there's music, speech content, and a lot of other people's rights, so they now want to licence it. So guess what? That will be another licence.

I really am fearful of the future when it comes to blanket licenses, to be perfectly honest. In my ideal world we wouldn't have ten licensing bodies that I have to deal with, and there are more than that, and I don't even deal with all the software licensing within my college.

I would dearly like to see a reduction in the number of licensors, but experience is telling me that that's not the way it's going to go. So I wish you well with the rest of the broadcast. I hope that I've given you some information, given you an indication of where we are with the E side of the blanket licenses, but watch this space, it's going to get really interesting. Thanks very much, and now I'll hand you back to Jason.

Thank you very much Alan. I think there's two things that come into that. First of all, make sure your institution actually holds one of these licenses before you try to rely on it of course. And if you are support staff helping tutors then you may want to spread the word about which licences you hold. Secondly, remember to comply with the licence terms. We're used to the excluded works list, hopefully above the photocopiers. The similar excluded list applies to digital also.

We're moving on now, but before we do so remember to put in your questions to us using the form below, if you aren't on full screen there's a question form link there, or you can email us at [webcast @ jisclegal.ac.uk](mailto:webcast@jisclegal.ac.uk).

As I said we get a number of questions each year about copyright into the service, and we've distilled the most common ones. And so now we move onto looking at frequently asked questions answered.

Some Frequently Asked Questions - Answered by The JISC Legal Team

This next piece we will consider some of the frequently asked questions put to JISC Legal's enquiry service on the subject of copyright and e-Learning.

Remember that members of staff at UK Further and Higher Education establishments are welcome to use our enquiry service with details available on our website, jisclegal.ac.uk.

Question 1: What exactly is copyright?

Answer: Copyright is the right granted to authors of original works that are expressed in fixed form. Once an original work is written down or recorded copyright arises automatically. It includes the right to copy, issues copies, perform, show the work in public, the right to communicate the work to the public and the right to made an adaptation of the work.

Question 2: Who owns copyright on online learning materials?

Answer: For materials that are created by an employee within the course of employment, the Act states that 'copyright will be owned by the employer unless there is an agreement to the contrary'. This means that where a tutor creates content for teaching which they are contracted as an employee to deliver, the copyright will usually belong to the college or university.

Question 3: Do I need permission to copy work onto a VLE or intranet when the work I am doing is for educational purposes?

Answer: In general the answer is yes, you must get permission which is known as a licence. There is no general exception or defence in relation to copying for education purposes under UK law. Fair dealing allows single copies of materials to be made by staff or students for the purpose of private study, non-commercial research, review criticism and news reporting. This cannot be used however for multiple copy or making materials available electronically.

Permission may have already been granted through a blanket licence such as the CLA Digitisation or Scanning Licence, or obtained directly from the copyright owner.

Question 4: If a teacher is preparing some coursework and comes across materials on a website and its only one small paragraph or one image, is she allowed to copy it onto the VLE?

Answer: Where the text or graphic being copied is insubstantial there is no infringement of copyright. Unfortunately there is no clear definition of insubstantial in law. Certainly, uploading a fairly recognisable portion of text or part of an image risks being held infringement.

Question 5: Can I use copyright material for examinations as part of e-Learning?

Answer: Yes. There is an exception which allows the copying of copyright works for the purpose of setting examination questions, communicating the

questions and the student answering the questions in an examination. This includes online assessments but will only apply to submitting assessment. This allows candidates to reproduce copyright work with acknowledgement within their absence. This exception does not apply to placing of copies of the work on a VLE for teaching or for reference purposes.

Question 6: Can a lecturer digitise and upload a DVD or other media to a VLE for students to view?

Answer: Although the showing of a DVD to a class is permitted by virtue of Section 34 of the Act, this section does not allow the digitisation and uploading of a DVD to a server. This could only be done with the permission of the copyright owner.

Where a DVD or other video has been saved or uploaded onto an institution's server with the copyright owner's permission it can be shown to students and lectures so long as they are on the institutions premises. This may not be an easy limitation to impose when using a VLE.

Question 7: Is it legal for a lecturer to scan text or images from a printed book and include that in a VLE?

Answer: Yes, provided that you have the permission of the copyright holder to do this. This permission may come from the blanket CLA Digitisation or Scanning Licence, or it may come from specific consent granted by the copyright owner. You will need to find out whether your institution subscribes to the appropriate CLA Licence.

Question 8: Is it permissible to print text or images from a website or an electronic journal?

Answer: Yes. So long as a single copy of the material is printed for personal study or non-commercial research, but this does not include copying for teaching. If the lecturer wants to use printed material in a course pack for students, prior permission should be obtained from the copyright holder.

Question 9: If someone is putting material on a freely available website surely they are making it available for copying?

Answer: No. It is not as simple as that. There is such a thing as an implied licence. A licence to copy could be implied where the circumstances suggest that the copyright owner expected the material to be copied. For example, someone who submits a letter for publication to a newspaper, that's an implied licence for the newspaper to publish the letter. It is often claimed that anything which is published on the internet is fair game and therefore the subject of implied licence. However, this is not how the law regards it. The copyright owner retains copyright in materials even though published on webpage.

Question 10: Can a lecturer record programmes from radio or television and upload them to the institutions VLE?

Answer: This will depend on whether the broadcaster is covered by the ERA Licence or not. If the institution subscribed to this licence this permits the recording of radio and television broadcasts by ERA broadcasters such as the BBC for educational purposes. Where the broadcaster is not covered by the ERA licence, such as Sky, Section 35 of the Act provides that educational establishments are permitted to make a recording of a broadcast for educational purposes without infringing copyright. The provisions require that the source of the broadcast is acknowledged. The educational purpose must be non-commercial, and the recording must not be transmitted to any person outside the premises of the establishment.

Question 11: Can a lecturer edit highlights from a programme to be uploaded onto the VLE?

Answer: Yes, the lecturer will be able to edit highlights from the programme. However, it is not permissible to make an adaptation of the work. Care must be taken not to put the edited pieces together to form another work which may be considered to be an adaptation of the original.

Question 12: One of our lecturers has missed a BBC Radio broadcast but has spotted the streamed version available on the BBC website. Can he save it onto the institutions VLE?

Answer: No. The ERA Licence only allows recording of broadcasts. While it may seem strange that exactly the same material is available to download, there is currently no licence, other than asking the BBC for specific permission, which permits saving of the streamed version. However, he may be able to get an off-air recording from another institution or from BUFVC, the British Universities Film and Video Council.

Question 13: Instead of putting someone else's materials on the VLE I'm just going to link to the materials instead. Is this okay?

Answer: You have a right to view and link to the materials on the web, however this right does not extend to pages which are of independent economic significance. In brief, this means you should not link directly to pages that you would bypass economically crucial elements of the website. There is an increased risk where the home page contains substantial branding advertising, or sponsorship, or warnings, disclaimers, or policies which are implicated on the deep linked page.

There is no risk of course where the copyright owner gives express permission. For example in a copyright policy or linking policy.

Question 14: If I can't locate the owner of some materials can I just use them and then if the owner turns up remove the material, or if necessary pay a licence fee at that stage?

Answer: Copyright is a form of property and like any other property must not be used without the permission of the owner. You should bear in mind that if the copyright owner appears they may consider suing you and your college for copyright infringement. Nothing in law will get around the necessity for the copyright holders permission if this is required.

However, you may decide that use of the materials is of sufficient worth to you that you are prepared to go ahead. In such a case you would want to show the rights holder, and perhaps the courts, that you have acted in good faith. It may be helpful to keep detailed records of the efforts that you made to trace the copyright holder. Also, where you've published the materials, it may be useful to include an invitation to the copyright holder to contact you.

And welcome back to this JISC Legal webcast on Copyright and e-Learning. We're back in the studio.

With us we have Jim MacNeilage, the Business Development Manager for the Copyright Licensing Agency in Scotland, and he's going to have questions put to him by John Kelly another of the JISC Legal team.

The CLA Trial Scanning Licences with Jim McNeilage and John X Kelly

Thanks for that Jason. Moving onto the CLA licenses which are obviously very important to institutions, we have some questions. Firstly, we often hear it said that institutions are paying a sizeable amount annually in licence fees for the use of copyright material for learning. What do colleges now get for that licence fee, particularly what do they get in terms of the use of electronic resources?

Well its true that universities and colleges pay CLA a lot of money each year, but I think everything's relative. It's approximately just over £4 per student for a CLA licence per year, and what else could you get that would benefit a student's education as much as a CLA licence? A couple of pens or a few beers in the Student's Union.

So it's per student?

It's per student. The licence has expanded in the last year or two, most recently in higher education, to allow digitisation of materials. The scanning of materials to make available to students. Certainly surveys have shown consistently over the years that the paper world isn't diminishing in any way, they're still churning out vast quantities of paper copies, so the licence has grown and moved with the times into the digital environment, so the added value to the licence is the scanning ability at this point in time.

We don't have enough time in perhaps this segment perhaps to go into all of the subtle differences between the licenses, but can you point to some of the limitations on what users can do that apply to both licenses?

Both licenses are basically the same. They do have a few differences because they have been negotiated at different times, but the basic are that now higher education and further education can scan material, make it available through VLEs to students registered on various courses and modules of study. Those students can access the material from wherever, download the material, copy it out if they need to, or simply leave it on the screen so that they come back to it again. They can copy it onto the hard disc of a laptop if that's what they want to do. And these are the big similarities in the digital changes.

Right, so if a lecturer finds some useful materials in a book, say from the library, and they consider that would be of value to their students, are they now just able to copy it and have it converted to digital format? Is it as simple as that or is there some things that they need to check first?

There are always conditions under use. Basically it's as simple as that, they are limited however to things they've used in the paper, Photocopying Licence, you can't copy more than 5% of a title or one article from a journal, that still remains the same. You can't copy anything that's on the list of excluded works, that still remains the same. But basically they can, they just copy it and use it.

And that volume, are the details of that available from the CLA, what amount they can copy?

Every institution should have CLA support material, each copy on the scanner, on one sheet précis, what they can and can't do within the licence.

So is that different for pictures or images in books? Can a lecturer just copy and convert them to digital and share them with their students?

There is no difference. If it's on the page they can do it. The big difference however with digital images is of course they can't edit it or manipulate it in any way, they copy it as it is. But they can shrink it and they can enlarge it to make it easier for viewing, but yes, there's no difference between artistic work, special images and text in this licence.

Right, so if they come across text which is a combination with an image, can they separate them or use, say a spreadsheet that's in the image in another context?

The visual image can be dis-embedded from the text.

Right.

They may not want the text to accompany the image at that point so it can be dis-embedded and used as stand-alone image on the presentation or in the worksheets.

Right. Many books come with CDs or DVDs in fact sometimes as resources to go along with the book, does the CLA Licence allow me to copy these CDs or DVDs? Is that how it works?

That's not permitted under either of the licenses at this point in time. The licence simply allows people to make a digital image from a paper original. Where material already exists in a digital form, for example on CDs etc., DVDs or on the internet, our licence won't cover that and they have to seek the permissions directly from publishers from the website etc. So the licence is exclusively making a digital copy from a paper original.

Right so even though this DVD already is maybe an electronic version of the book I can't re-use that for my students?

No, unfortunately. I know it seems a wee bit silly that that's the way things happen, but licenses are continuously evolving, one of the things that CLA is speaking to rights-holders at the moment is to get permissions in born digital environments so that use of those materials can be made. But at the moment we're stuck to making the copy from a paper original.

And I think I heard you say also that if I come across material on the internet, which is just say a CLA licensed publisher material already on the internet or in a digital format, can I copy that? Can I use that?

Unfortunately not, because again its there and exists as a digital image in the first instance, even though you had the paper copy you cannot copy the digital image, you have to go and get the paper copy and scan it up and use that. That of course means that you've got to use a bit of resource and time to do it, but at the moment the licence dictates that's the way it works.

Right, that does sound like duplication, but that's what we're...

That's what we're stuck with at the moment. There's no reason why, in future negotiations, in future re-births of the licence that these things can't change, and that's why CLA is always in discussion with the representative organisations, UUK and the AOCSC to see what people want to do, what the practicalities are, and to see if the rights-holders will allow that use of materials.

Right so if I'm a lecturer and I know that my neighbour institution has already converted a lot of materials under the CLA licence to, for their own purposes in their colleges. Can I just borrow these from that college and use them for my own students? The second college we'll say is happy to share them because they've shared stuff in the past. Let's say there's no money changing hands.

That's an interesting point, and here we appear to have a clash between the two licenses. The recently introduced Higher Education Licence explicitly allows that to happen, where both institutions hold a CLA Digital Licence, and there's still some higher education institutions that don't hold the licence, but

all FE do, then a copy can be exchanged between them where both also hold an original copy of the published material. In other words, it saves someone duplicating the resources of scanning and making that digital image, but both must hold a paper copy of the original material.

So they have to have the...?

They have to have the title on the shelf.

Right, they have to be able to show that they have their own copy of this?

Exactly, and of course that's to protect the core business of the publishers to make sure that people are still buying the books and journals. However the FE licence doesn't allow that and that seems a bit anomalous that higher education can ask FE for a copy, but FE can't ask each other. That's something that we will have to raise with rights-holders and have a policy decision made on it.

It wasn't thought of I suppose?

Basically one licence has overtaken the other. The HE licence came in towards the end of last year. The Further Education Trial Licence has been on trial for the past three years, so one has slightly overstepped the other and I think there may be a case here for things to be drawn closer together, but that's something that will be discussed.

And just to finish up, we hear about raids and audits by the CLA to do with copyright, are these scare stories or ...what is the CLA approach to enforcement and compliance? Particularly to do with FE and HE institutions?

I think they tend to be more scare stories and a bit of the urban myth about them than reality. Most institutions that I've had dealings with or spoken to, find that surveys don't really impact upon their day-to-day business. They're there, they happen occasionally, the CLA staff come and go and at the end of it a survey is taking place, and I'm sure they are all quite painless.

The newly-introduced Higher Education Licence however has some more stricter terms regarding the audit compliance side of their licence. And in that regard CLA staff will come into it, a higher educational institution will expect to see records of copies that have been made under the licence, digital copies that have been made under the licence.

Records of?

Each copy made, because the Higher Education Licence requires that a record is kept of every individual digital copy that's made, and the purposes for which its been made.

Of the publication?

Of the publication, the ISBN number, the number of students, the course that's been made available etc.

So they're tracking every...?

Exactly, and there's a standard record sheet that has to be filled in. Our staff will expect to be able to trace the copies through the system, back eventually to the original title on the shelf in a library somewhere. That doesn't apply to further education, further education do not have those requirements. There's no record keeping involved at all in further education, and periodically there may be a survey held on that site. But other than that, they don't have the record keeping obligations that higher education now have regarding scanning.

As far as photocopying is concerned nothing has changed, it's still a survey periodically. But the HE side does have those tighter and stricter controls on their use of material.

And you said that's a trial? That's still considered a trial licence, the HE one is it?

That's correct. The HE is a trial licence until 2007, that's to give CLA time to gather data regarding the use of materials to satisfy rights-holders that this is a suitable licence, it also gives the university, or indeed the further education side, a chance to put forward their views on how the licence should change to suit their business needs. It's all part of the negotiation process.

Well, we're looking forward to how that all develops. Thanks Jim, and you've given us quite a lot to think about with that. I know that you're staying on for the panel discussion towards the end and we look forward to hearing more from you then. And back over to Jason.

This is the JISC Legal webcast on Copyright and e-Learning. Thank you ever so much for all your questions so far. They've certainly given us a lot of material to get through in the next session.

We have with us still Alan Ray in the studio, and we're going to have questions put to him by Betty Wilder.

Question Time with Betty Wilder

Welcome Alan, we'll go straight to the questions I think because we've got loads. We won't get through them all, but here goes. Question number one is from a college.

We sometimes use images from Google. Will a simple acknowledgement satisfy copyright criteria?

We come here immediately to the question of using born digital materials, and my answer to that one would be to look at the terms and conditions on the

Google website. Invariably the terms and conditions indicate 'for personal use only', but a number of website will allow multiple copying or will tell you what acknowledgement you've got to put in. So that's the first port of call in this instance, terms and conditions on the website.

Thank you. Now we'll move on quickly to number two. This one's from a university.

Off air recording. Please, can you clarify that if we have catalogued off air recordings on both DVD and VHS that these can be borrowed by students and staff and taken out of the library? We do have a current ERA licence.

Straightforward answer, yes. The only slight issue with that one, sorry to complicate it, is that as I said in the piece earlier which where I was talking about the ERA, they're now saying that we can digitise but only show within the confines of the building.

It transpires that it was never actually written in the licence that I could ever see, but it transpires that, yes, you can borrow from the library but you are only ever able to borrow and use within the building. But I don't think that's anything that was ever policed and I don't think anybody should worry too much about.

Right and another question, I'll slot this one in just for clarification, can you say again who the ERA are?

The ERA are the Education Recording Association, formed under Section 35 of the Copyright Designs and Patents Act 1988 as amended, and they are made up of rights-holders, television companies, producers and so on, and they have a mandate to allow us to record television and radio broadcasts within limits.

And they do have a website?

And they do have a very good website.

Right next question is again from a university question.

I teach academic writing to scientists and medics. I want to use video clips from the BBC and OU Signs programmes, both in the classroom and in a password protected web CT, VLE. These serve both as sources for vocabulary development and as prompts for writing practice. What measures do I need to avoid infringing copyright?

Under the terms of the ERA licence the BBC programmes can be recorded and they can be shown as clips. They don't always have to be shown in their entirety. Television programmes can be edited but you have to retain integrity of the edit. So you can't separate soundtrack from vision. You've got to keep the two together, you can't keep vision off and put your own soundtrack on. You're getting into the whole field of moral rights there which we won't go into.

The only issue, big issue with this question is the fact that the OU broadcasts are not covered under the ERA. OU has its own separate licence, has its own separate terms and conditions, and again, we come back to the point about the ERA and VLEs. Fine, if it's the server within the physical confines of the building, outwith that, no, no licence as yet. Not to say that you couldn't try and get permission from the rights-holder, but in this instance rights-holders are very tight to the ERA and it's unlikely that you'd get separate permission.

Thank you. Now we'll just move straight on to the next question. Again quite a long one, so bear with me. This again is from a university, and HE one.

If we wish to use televised programmes for educational purposes in the classroom or in our password-protected VLE, are we allowed to edit them or do we need to keep the integrity of the original whole?

I think in fact you've just answered that.

To an extent yes. I'll just reinforce the point. You can edit, you can put little clips, show reels and so on together, but you've got to acknowledge where they've come from. You've always got to acknowledge where its come from, you've got to find some way of showing if you digitise a programme under an ERA licence, and remember its not all programmes that can be recorded under ERA but it's a fairly wide spectrum, again, the website will tell you what you can and can't do. But you've got to show an acknowledgement. In my own college now what we've done, and thanks to the people in the Audio-Visual Department, they've devised the system whereby there's now a frame goes up at the start of every programme to indicate that this is licensed material under the ERA scheme. In the past, with video tapes, just had to be labelled and logged, but with this one, if you like, its electronic labelling and loading. But yes, you can edit, but you've got to keep soundtrack and vision together. You can't do anything else.

And maintain the integrity.

Maintain the integrity. You can't stick it into any kind of morphing software or anything like that.

Okay thank you. Now the next one.

I am working on a JISC project where we are creating e-content that we use as existing content. Some of the existing content has third party IPR associated with it. The content we produce needs to go into the JORUM repository and will be used on campus and may also be used by students registered to one of our project practice partners, but off-campus. Can you advise us as to the regulations we need to follow to ensure that we have IPR clearance?

That's an horrific question with an horrific answer. The answer is, it's just a mess, in my opinion. The JORUM for those who have not come across it is a repository system, an electronic repository which is an incredibly ambitious

scheme, but my concern for it is exactly encased in that question, have you cleared the rights as you go on down the chain, that if you're...if you're re-using there is the term, the other term being used these days is re-purposing, its effectively using somebody else's material for some other format and I would watch this space with this one, this is a difficult one. I know the JORUM are working very hard on it, and there are contracts that you can sign to indicate that you have cleared the rights, but you've got to make very sure that whoever has used it before you has also cleared the rights previously, and that you are allowed to do a different purpose. One thing that people tend to forget within copyright is that the rights-holder, and the rights-holder only, has the right to allow restricted acts, and even although you might be allowed to copy doesn't mean to say that you can then go on and re-publish, lend, sell or whatever, you can only do what you apply for or what your licence allows you to do.

That's a difficult question.

Thank you. I think on this one, at this point, I will put in a plug for a E-depositories, the legal aspect of e-depositories, a conference that we're holding at the end of may, and I suggest that the viewers perhaps look at our website for that. I'm sure that that will be discussed further.

Yes, that will come up because it's a very salient issue, it's a very contentious issue as well.

Right, well I think that we can now move onto the next question. This is an anonymous question this one. What is the legal situation as regards showing video tapes or DVDs whether bought or rented?

That's an interesting one as well. There's many of our viewers today I'm sure are subscribers to the list Copy Seek, electronic listing which comes out through JISC Mail, and there's actually a debate over the last couple of days about Section 34, Sub-Section 2 of the Act, which indicates that you can show for educational purposes any programme. Now, it's the definition of programme that's the difficulty here. The publishers they maintain that they have a term in their contract that these programmes, if they're bought or rented, are purely for domestic use. Now, whether or not that's absolutely the case and whether we can buy them or use them or not its another issue, it's a big issue in actual fact, and its one that's just raised its head again, because I just recently came across yet another licensing body, the Motion Picture Licensing Company who are slowly moving their way around the country trying to encourage people to show. I'm not sure if they're trying to licence for educational or entertainment, their material's a big vague, perhaps purposely vague but maybe I shouldn't have said that.

Right I think we'll move swiftly on after that.

Aye I think so.

The next question, which is an HE question.

Would an external consultant working on material for an E-module for a Uni own the IP if the IP is not explicitly addressed in any contract?

Quite possibly. That's again extremely pertinent as more and more people are hired or employed to write materials. The whole ownership of copyright is a major issue and one, in my opinion, particularly in further education, that's not well addressed at all, and I don't have that much experience of HE and believe that it's better addressed there. But certainly, in this instance, that should be written into the contract. All too often unfortunately what's happening, is that people are commissioned to write work, they get paid but there's no contract drawn up, so that when something comes up "can we use it for some other purpose?", "well no you cant, because I didn't give you permission", "ah, but there was no contract" so really you need to get into a contract. I don't want to line the pockets of solicitors necessarily, present company accepted, but, we've got to be very careful with this one, because people are becoming much more aware of their IP.

Exactly. And it is a costly business producing these modules.

Extremely.

Now, I'm getting a signal that that's all we have time for at the moment, so I'd just like to say thank you very much indeed, that's been very helpful and I think that its now back to Jason.

Thank you.

Thank you very much there Betty. You can continue to put your questions in, we'll answer these at the panel at the end, at 3.45. We also have the evaluation form, if you're dropping out for any reason or can come to the end of the webcast today at 4 o'clock, then please fill in the evaluation form. We hopefully will make it worth your while by including you in a draw for an Apple iPod Shuffle, so that should make it worth your while we hope.

Now, you may want to spice up your e-Learning with multimedia and/or broadcasts included as part of your e-Learning materials, and these are the two segments that we're going to come onto next. The second one will deal with broadcasts and the recording of broadcasts and how they can be used in e-Learning in compliance with copyright. But first, we'll look at multimedia and copyright with John Kelly.

Multimedia and Copyright with John X Kelly

Multimedia and copyright. I plan in this part to try and identify what, if anything, is different about multimedia in terms of copyright. And then look at some of the exceptions which might apply, and after that identify some resources which may assist with generating and compiling multimedia enhanced learning environments.

Some generalisations are used throughout, and for more detailed guidance contact JISC Legal directly via our website.

For learning to be effective it really has to be an active process. Successful use of VLEs for example is for the most part dependent on using features which will be familiar to student users, and this can range from something as simple as a teacher using audio and video to enhance some text materials, to high end learning environments with simulations and modelling using sophisticated software interfaces.

Basic online assessments, quizzes and surveys for example, are often seen as ways to interact with students. Simulation in a learning environment can be as close as students will get to experiencing the real thing before moving on to working in the outside world.

So the rush is on to build up content which enhances the learning experience for the student. Where is this content to come from? And for many this is the first time they come across the complication of copyright. Whether you just want to use a small piece of someone else's multimedia programme, or whether you want to compile your own complete multimedia work based on elements or objects from somewhere else, copyright law comes into play.

There's a lot of jargon in this whole area, and because the law loves definitions and certainty it may be useful at this point to identify what I mean when the term 'multimedia' is used. I have put up a suggested definition for you to have a look at. Multimedia applications or products are works which are a digitised combination of diverse media with which a user can interact.

And that is from "Copyright Law in the Digital Society The Challenges of Multimedia" by Tanya Aplin Hart Publishing 2005.

There is usually content and there is underlying software. In the educational context at its simplest it is a computerised combination of multiple digital media. This will normally include at least one distinct media such as text, graphics or still images, and one continuous media, such as sound, animation or moving images.

A user may then interact with that digital information in varying ways.

And what does copyright law in fact say about multimedia? Remember that digitising is considered copying and that this right to copy belongs to the copyright owner. The legislation itself does not really deal directly with the term 'multimedia', rather we have to look at a number of rights which arise, and decide whether and in what way the law protects a multimedia programme in its entirety. This is in addition to and distinct from the protection which may exist in its component parts.

Traditionally text is literary work copyright. Still images are artistic work copyright. Moving images are film or video copyright. The spoken word is

sound recording copyright. And musical works have their own copyright. Software too has copyright.

In multimedia all of these items are bundled together into a single unit and as well as the individual rights which exist in separate components the multimedia work itself has its own set of rights, the details of which will depend on whether the multimedia work qualifies for copyright protection either as a computer program, a compilation, a dramatic work or a film, or if it qualifies for protection as a database.

It is probably the case that reference type multimedia works that use a static user interface, are protected as compilations or databases. Multimedia video games and multimedia works which feature a moving user interface are most likely to be protected as films or dramatic works. In general, classification of a multimedia work as a computer program will provide the greatest range of permissible exceptions for the user. Whereas, classification as a database will offer a more restricted range of permissible uses.

Licences - So how can a lecturer lawfully use components of a multimedia work to enhance her own teaching? The short answer is by permission, which means a licence from the owner of the rights, and licences are dealt with in more detail later.

Exceptions. Are there exceptions to copyright law which allow a lecturer to use someone else's multimedia material or must she always get permission from the copyright owner?

The short answer is that permission is required for multiple copying which includes putting material in a shared electronic learning environment. For users of multimedia works the most comprehensive set of copyright exceptions concern the underlying software. Since the user is able to reverse engineer and decompile the program, make a backup copy of the program and other acts necessary for the lawful use of the program. Where the multimedia work qualifies as a copyright database, the rights attaching to the contents themselves come into play, and the usual copyright rules apply.

Fair Dealing. So I have heard about fair dealing, does it have any application when I want to use some audio clips and video images, or if I want to use a familiar multimedia format?

As we will hear throughout today copyright law permits the use of a copyrighted work without the permission of the copyright owner only in certain limited circumstances.

Fair dealing permits the use of a copyrighted work for purposes of non-commercial education, research, private study, criticism and review. Fair dealing with a multimedia work which is protected as a compilation, copyright database or a dramatic work, as well as fair dealing with the individual works themselves that comprise the multimedia work, will need to be considered by users.

So in attempting to use the defence of fair dealing, the characteristics of each element which makes up the multimedia work needs to be dealt with one by one. This is examined in more detail in the presentation which follows.

Commissioning multimedia programmes may seem very attractive. Multimedia can be flexible and some parts may be re-used, unlike training videos which usually have a short shelf life and can look rather dated very quickly. Ensure that if you are engaging outsiders to provide you with a multimedia programme that your institution has a clear written agreement which gives as much flexibility as possible in the use you can make of the finished product, as well as each of the elements making up the work. Otherwise you may find that the contractor retains rights in the work which, if you decide to adapt or change the use of, will cause difficulty.

It is strongly recommended to have legal advisers look at any agreement from the institutions point of view before completion of the contract. JISC offer assistance in this area and JISC Legal can point you in the right direction.

Many people think that it is simpler to create video, a multimedia work in-house to keep control over the work and to be clear about who owns the work. Bear in mind when selecting elements and objects to comprise the work, these elements bring with them rights, and understanding what rights are brought along is necessary.

If a colleague has produced materials which you want to include in your work it is only courteous to discuss this with them. Remember, permission is also required to adapt material produced by someone.

And now some quick questions to finish off.

Question 1: So can a teacher take parts of the video images recorded of the Planet Earth Documentary which was broadcast recently on the BBC and integrate them into a teaching session she has planned for her students? She intends to put them up on a screen with presentation software.

Answer: Showing recordings of BBC broadcast material in this way, on the premises, is covered if your institution has an ERA licence. Using the recording in a VLE or stored on an intranet requires permission.

Question 2: So when a work or a publication contains material in several different forms, such as a computer program or a video, how is the copyright worked out?

Answer: The answer is that the copyright will subsist separately in each item and rules for that format will apply, so the copyright could run at different times. In that sense it is no different from a magazine or a collection of works by a number of authors. Of course it may also be a database and in that way

attract rights which protect the skill of the individuals who have put the multimedia package together.

Question 3: Can I just borrow the format for asking questions in the TV Show 'Who Wants To Be A Millionaire' to jazz up some of the coursework for my students? This is available electronically on a DVD which I got at Christmas, so I could get some of the graphics and audio from there. I would be Chris Tarrant.

Answer: The answer of course is yes, but, only with permission. Although format rights as such do not exist under UK law, copyright will protect the expression of the ideas for the format, and this likely belongs to Complete Communications Ltd. You may also need to avoid trademark infringement.

TV formats such as cookery or talent type programmes are hard to protect in copyright, as insufficient certainty in the format to be a dramatic work capable of copyright exists. The quiz show format is not protected by copyright as such, but, for example, copying images or slogans or theme tunes or text layouts is less likely to infringe copyright.

Okay, I'd like to leave you with some suggested resources and some other websites which can provide further assistance with multimedia.

Education Media Online provides a national online resource for education and research. It's part of the services delivered by EDINA.

The Moving Images Gateway collects together websites that relate to moving images and sound, and they are used in further and higher education.

Eduserve –Chest - negotiates software and information licenses for universities and colleges.

Thank you.

Using Recordings in e-Learning:

Good afternoon. Welcome to the session on using recordings in e-Learning. This session will give you a short overview of the copyright issues involved when using recordings in e-Learning.

Towards this I've classified recordings into song, film and broadcast recordings.

I will look into the application of UK Copyright Law, which is the Copyright Designs and Patents Act 1988 to these recordings when using them in online learning. Lastly, I will give you some good practice notes so as to legally use recordings in e-Learning.

UK Copyright Law defines sound recording as 'a recording of sounds from which sounds may be reproduced'. And this means that sound recordings can

be on CD ROMs, vinyl records, tapes, disc and also digital mp3s and can include sound recordings loaded onto an e-Learning environment.

Let's record a sound recording (pause for music) – what you heard now as a mixture of various items that contributed to the sound recording. It included the lyrics for the song, the composition of the song, the performance of the song, and also a recording of the song. Copyright law says that 'copyright in sound recordings exist independently of the copyright in literary, dramatic, musical or artistic works recorded in them'. What this means is that copyright of the sound recording is separate and it exists separately of copyright in each of these factors that is lyrics, composition, etc., that contribute to the sound recording.

So you should be wary that any copying of a sound recording to an e-Learning module may involve copyright content.

Copyright grants some exclusive rights to the owner of the copyrighted work, they include the right to copy, issue copies, rent, lend, perform, show or play the recording in public, the right to communicate the recording to the public and the right to make an adaptation.

This means that generally permission will be needed from the copyright owner before using a sound recording in e-Learning.

Copyright law permits the use of a copyrighted work without permission from copyright owners in certain cases. This is commonly known as fair dealing. Fair dealing permits the use of a copyrighted work for purposes of non-commercial education, research, private study, criticism and review.

However, in the case of sound recordings the exceptions are very limited. What is permitted with the sound recording in e-Learning is for criticism or review provided the source of the sound recording is acknowledged.

For tutors and lecturers involved in e-Learning there's a limited exception available under Section 32.2. This allows copying sound recordings for examinations and copying for the purpose of instruction in making films or film soundtracks. But this requires that the copying of the sound recording is done for a non-commercial purpose, it is done by the instructor or person who is doing the instruction, and that sufficient acknowledgment is given to the work.

Let's take a look at an interesting copyright issue when using a sound recording in e-Learning.

A lecturer downloads an audio clip from the internet and then uploads that for research or private study purposes of students on e-Learning. Would it be fair dealing? No, it is not fair dealing for research and private study. It is not applicable to a sound recording. Often there are terms accompanying an audio clip on the internet relating the terms of its use. These terms might prohibit the distribution of copies of the clip, so when a lecturer makes the clip available on e-Learning he is making it available for each student who might

be accessing the e-Learning site from within, or outside the university, to download and make copies of the clip.

Copyright law treats this as an infringement when done for research and private study. The best way for the lecturer or his institution to get this job done will be to obtain permission from the copyright owner to use the audio clip for e-Learning.

Sound recordings constitute a significant part of film or video. So what exactly is a film in the copyright sense?

A film is a recording on any medium from which a moving image made by any means may be produced. Film clips can be downloaded from the web, recorded from video cassette, CD ROMs or from television broadcasts for use in e-Learning. Let's now watch a sample video clip (pause for video clip sample)

A film has many copyrighted elements like copyright in the film, in the underlying work, which may be a novel, short story, or a play, and also in the work of the performers.

So permission may be required from choreographers, writers, and even directors.

A copyright law of a film has the same exclusive rights that are available in the case of sound recording. The permitted acts with the film in e-Learning comprise training in the making of films or film soundtracks. This must be done by the teacher or pupil themselves, and the use must be non-commercial.

A video clip is available on a CD that came with the printed book. A lecturer feels that it is easy to use this in e-Learning so he uploads the video clip to an e-Learning module. Is he committing an act of infringement? Just as in the case of audio clips in videos may be covered by the terms of its use, so unless there is a written permission given by the copyright owner to copy the materials from the CD, the act of the lecturer would be treated as infringement of copyright?

Moving to broadcast of sound and media recordings. What does copyright law say about recording broadcasts? Broadcasts under UK Copyright Law is 'an electronic transmission of visual images, sounds, or other information that is transmitted for simultaneous reception by members of the public and is capable of lawfully being received by them' or 'is transmitted at a time determined solely by the person making the transmission for presentation to the members of the public'. So broadcasts are a medium of extending sound and video recordings through e-Learning for its uses within and outside university premises. The layers of copyright in broadcast recording will involve copyright for the sound recording, copyright for the video, and copyright in the broadcast. The rights of the copyright owner of a broadcast are the same as that in the case of sound recording or film. One of the rights

of the copyright owner is the right of communicating a work to the public. By making a broadcast this right is brought into play, and so to broadcast anything requires the consent of the copyright owner.

Fair dealing with broadcast is allowed for recording current events and for criticism and review. But it requires an acknowledgement of the source of the broadcast, if possible.

As regards to educational copying, broadcast can be copied for classroom use but it must be done with appropriate permission. The exceptions to such situations are where the broadcast is copied for training in the making of films or film soundtracks, and can be done only by the teacher or pupil themselves for a non-commercial purpose.

A lecturer makes a video to promote his e-Learning course and adds a pop song as a soundtrack. He then makes it available on the website, accessible to the general public. He argues that it is an educational use and so it is legal. Is it? No, it is not legal. Commercial recordings may be used for teaching purposes, but may not be used for public performance unless the lecturer or his institution has his permission for public broadcast of the music. Putting the music on a website which is accessible outside the institution will be classed as public performance to broadcast to the public, and therefore an infringement of copyright.

Given such challenges so what is the best way for users of e-Learning facilities to get the job done while limiting or avoiding liability? You might have noted that I have time and again used the word 'permission'. This permission from the copyright owner is called a licence. Sometimes copyright owners act collectively to licence certain users of a copyrighted work to collective licensing societies. These bodies exist for licensing certain uses of sound recordings, films and broadcast materials.

So, these bodies can be approached to obtain a licence to use a recording in e-Learning. Here is a list of such bodies.

If there is no collective licensing body we can obtain a licence directly by contacting the copyright owner. In the case of sound recordings you can obtain the license from the record company. For films it is often the producer or UK Distributor who is the copyright owner. For broadcast you may approach the broadcaster. In any case a sensible practice is to put this quote in practice when using copyrighted recordings in e-Learning – 'I have heard that nothing gives an author such great pleasure as to find his works respectfully recorded by other learned authors'. This simply means, acknowledge the author of the work when using materials in e-Learning. Now this is what I just did.

The Panel - Your Questions Answered

Well welcome back. In the studio I have with me Alan Ray and Jim MacNeilage and we're going to enter a more wide ranging discussion on the

number of questions. Thank you very much for all your questions so far this afternoon, its made it an easy job for us in finding questions a difficult one, and cutting them down to a number we can deal with in the next ten minutes before we close. Okay, turning then to my first question.

Jim first of all. We have someone asking :

Your speaker said that under the CLA License we can dis-embed photos from text. Does this mean that you could use all the photos from one chapter or journal? Or is it just 5% of a publication, and do they have to be referenced?

Well that's an easy one to answer. Quite simply, if you can photocopy it, as you could photocopy every image in a chapter or in a journal article, then you can scan it and dis-embed it. So if there are several images in the journal article you can scan and dis-embed, there's several images then use them. All artistic works have to be acknowledged, so yes you would need to reference where they came from, but that's standard practice and I'm sure people would do that anyway.

Okay thank you very much. And the second question to Alan, with regards to commissioned materials. We've touched on this before, but to be clear, a further education college or university commissions materials from outside. What's the situation with regards to the copyright?

The situation's very straightforward Jason. If people would just look at the Act, Section 11 quite clearly states that the author is the first owner of copyright, unless that person is an employee and therefore the employer owns the copyright, unless there is any agreement to the contrary. And its really as simple as that. The unfortunate thing is that people don't write the agreements to the contrary, and invariably commissioned work is sort, payment is made and there's no contract drawn up, so there's always this question as to who actually owns the IP. The advice always is to get it in writing.

Okay, and a warning for colleges and universities therefore, is if they don't put it in they won't own the copyright?

They won't own the copyright no. And when they then come to try other use than that which was implicit in the first transaction, the person who owns the copyright might turn round and say "hey, wait a minute, you can't do that, I want something else for this, I want more royalties, I want better acknowledgement" or whatever. But no, unless it's written down they don't own it.

Well that leads onto a good question about change of use. A college or university has used best endeavours and has managed to clear copyright in materials and developed e-Learning materials. It looks successful, it looks as if it could be commercialised, and sold. Does that raise copyright issues?

Huge copyright issues, because again if you clear copyright, the contract should state quite clearly what use you're making of it so that its for use internally, its for use with particular course, its so many copies a year, it's a particular timeframe, and if you then want to commercialise that that's an entirely different kettle of fish because it is complete change of use, and that's not what your original contract, or your original licence allowed you to do. It's a bit like the licenses that we have with Jim, with Jim's organisation. It allows us a broad spectrum of use, but I can't then just immediately commercialise all of that, because not just CLA would have something to say about that, the rights-holders who are behind CLA would have something to say about that.

Okay thank you very much. And Jim in your experience can you think of any areas of particular good practice that you've seen at a college, or university, or indeed elsewhere outside the sectors?

Good practice, as far as CLA is concerned usually comes down to one thing and that's the general term 'education' informing the staff what they can and cannot do with copyright material. One instance that I saw recently was the staff policy booklet created by Glasgow Caledonian University which covers all areas of copyright and it's an excellent little publication. I wish that every institution would produce something along that line and push copyright issues more to the fore. But unfortunately people tend to leave them in the background until a problem arises. But certainly best practice, get your staff used to dealing with copyright issues, get them asking the questions.

This is an interesting area Jason because I think there are a number of examples round both FE and HE as Jim eludes to of good practice, because I've seen good policy documents, I've seen good descriptive documents as to what you can and can't do, but it would be nice if we could get something together, and I think that's where JISC Legal works extremely well with the likes of the website and all the publications, because there's then a certain continuity and its backed up by people who have got legal background. I think a lot of us in certainly colleges don't have the legal education so that its only information we're able to provide and sometimes its not quite as accurate as it could be.

In further education last year the Further Education Reprographic Managers Forum produced a copyright flipchart, which in fact won a Beacon Award for its copyright innovation, and that again is an excellent example of good practice, but it was colleges coming together to create a single source of material and as Alan said, perhaps that's a better way to do it than each institution trying to do their own. But, in the absence of anything else, they should try to do their own.

And infringing everybody's copyright into the bargain.

Let's hope note (laughs). Alan, can you summarise then what the advantages are of good institutional copyright awareness?

Oh (laughs) it's keeping people like Jim MacNeilage away from my door. If we can do that I'm very happy. The advantages, what bothers me, and I know it bothers Jim as well, is the fact that this is the system we've got in this country. Like it or not. I don't think that a lot of educational establishments make the best of it. Copyright in particular is looked at, its like a dark art, and you know 'don't talk to me about that, we've got plenty of other legislation that we need to worry about, but copyright, oh that's expensive stuff, oh no we don't infringe', but, if we just had the benefit of having, and again it comes down to having a resource a bit like the booklets, if you have one person per establishment who can be contacted by the licensing bodies and that person is then able to cascade information down through good CPD within the organisation. And it comes back down to education. The more people know about it, the less they will fear it and the more they will be able to get the benefit of it. I've had the argument from the Association's point of view, with all the licensing agencies, that we are now demanding value for money because our funders are asking for us to do this, and there's a lot more we could actually do with our licenses that we're not doing, because people are frightened about it and they back off.

I think its fair to say, leading on from that then, that if the CLA licence sits in a drawer or is well-used, the key is the same for the moment at least, it may affect negotiations later on.

Exactly. The only thing worse than not having a licence if you require one, is having one and not understanding it and not using it. I have met people out there in higher and further education who really don't understand the terms of the licence, and have restricted their use of copyright materials because of their lack of understanding. So, as Alan says, it's a matter of getting people to...I won't say embrace copyright, but at least not be afraid of it, and try to get to understand it. CLA tries its hardest. We offer various copyright briefings and workshops on locations, and we try hard just to get the message across, but it should also come from within the institutions.

Well without dwelling on the nasty parts if you like, are there any danger areas you can think of that commonly come up for areas where infringement is more likely, or if infringement is likely to be troublesome?

Its certainly one of the areas that I'm having difficulty with these days, is the born digital, because that's not subject to blanket licence. Pretty much everything else that we deal with, music, text, images, recordings and so on, but with the increase in the amount of materials that are now available on the web, other sources, DVDs and so on, that's a big, big grey area. And of course it comes back to the age old issue that we've had within education, and the licensing bodies know this only too well, the technology constantly outstrips the legislation.

There has been a recent spurt in legislation to try and catch up, but already we're moving into Podcasting, and as I said earlier, all of a sudden pop out of the woodwork there's MCPS and PRS, who are known to us, but they now want something else out of this because technology is constantly changing.

Okay, so we have the gap of the born digital and have to look at that, and new technologies which may raise new questions.

Coming from an institution how would you like to see the blanket licenses develop in the future?

Oh [laughs] with Jim sitting here? I would like to see one licence. In an ideal world. I don't think I will live long enough or work long enough ever to see it. Just, we've got too many, and to my mind it's anomalous that all text isn't covered by one single licence. Now, I know that those who licence this have tried to talk to each other and so on, but there are vested interests. Invariably this comes down to money. Money that we have to spend as institutions and money that the licensors are trying to gather on behalf of their stakeholders, so it's an interesting area.

And on the other side how do you see the CLA licenses developing in the future?

I hope and think that the CLA Licence must broaden even further than allowing people to scan. We're holding talks with rights holders to allow the use of born digital material to be able to take copies from the internet, be able to take copies from the CDs or electronic journals, within limitation along the same lines of a licence, but again, generally broadening that. That's got to happen because that's what people want to do. Not licensing it means that people either have to go directly to rights holders and try to obtain permissions with difficulties they may have, or people don't seek permission. It's much better to make it legitimate, and make it legitimate easily.

Yes, and infringe. And as soon as you get into an infringing culture that's when it escalates, because...I'm not saying it has to be stamped on or policed, it needs to be managed, and if you don't manage it, all of a sudden you find yourself people re-publishing and making up their own DVDs of stuff 'oh nobody's bothered with this before, we'll not get caught' and then all of a sudden stuff starts to creep out and you end up with piracy, and it's a very short jump from little bits of infringement which do go on, because you want to get the materials into that next step, and that's what we've got to try to avoid.

A last question for Jim. Do you see the diversification of FE and HE into more commercial activities as being a problem in terms of the CLA Licenses?

I think it has been a problem since the change in 2003. The HE and FE Licenses are educational licenses. They do not cover activities for a commercial basis. We've had a number of institutions come to us and ask for what we call a business licence to cover those activities, but too many haven't, and it's happening out there, and it's obviously something we're speaking about to the negotiating bodies, and hopefully we'll get a resolution in the not too distant future, but there are issues out there.

Okay thank you. And the last question for Alan. Do you have a parting message? Words of encouragement to offer e-Learning developers and those supporting FE and HE?

Oh, ask the question. Just ask the question. Don't go ahead and please, please, ask the question before you actually then start to do something. All too often I'm being asked, and I know a lot of colleagues are being asked to do the repair work, when in actual fact if the question had been asked at the start the repair work wouldn't be necessary afterwards. And once you've got down this cascaded area and the material starts to get distributed and so on, then suddenly you realise that its not been cleared, its an awful long way back up a slippery slope. Just ask the question at the start. It makes life a lot easier.

That's wonderful. Alan Ray thank you very much. Jim MacNeilage thank you very much.

Thank you - Conclusion – Jason Campbell

And we're coming to a close on this JISC Legal webcast today, and we hope that it's been useful to you. We have an evaluation form available and if you click on that and fill it in you have the chance to win an Apple iPod Shuffle.

Could I say a huge thank you today to audio visual and technical staff here at the University of Strathclyde that's made this possible, and also IT staff up and down the country that know the difficulties in getting a stream through a firewall, we appreciate all the time you've put in to trying to get that right.

Thanks also to the rest of the JISC Legal Team that have put it all together and again to my guests here in the studio.

There are two JISC Legal events coming up you might be interested in. On 12th April we're holding a Legal Aspect of Online Learning Environments Workshop and Conference at the University of Warwick, details are on our website. And on 31st May and 1st June, Legal Aspects of e-Repositories and e-Collections. A slightly more specialist event. Again, details available online from our website.

To remind you that JISC Legal offers an enquiry service. You can put questions to us at any time via the web form on our website, via email to info@jisclegal.ac.uk, or by giving us a phone. And we also offer events throughout the year, keep an eye out for them, and publications and guidance online.

With that I'll say goodbye from JISC Legal.

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