

Copyright and e-learning

a guide for practitioners

Second edition

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Copyright and e-learning

a guide for practitioners

Second edition

Jane Secker with Chris Morrison

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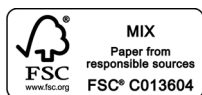
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Preface to the second edition

In a recent conference workshop I asked staff working in higher education to choose from a list of adjectives that might describe copyright and new technologies such as social media, and to consider any words that might apply to both. The exercise revealed that a perception remains that many of those in education regard copyright laws as restrictive, slow to evolve and somewhat out of step with the digital age, while technology is seen as exciting, constantly evolving, and responsive to the user. This perception was one that I had been keen to counteract when first writing this book in 2009. However, the exercise also highlighted that the intersection between copyright laws and new technologies remains an area of considerable interest, but one of much concern to people. During the workshop the group discussed how the two concepts had more in common than it might appear, yet the grey areas, the areas particularly where the law is open to interpretation, worry people. What emerged from the workshop for me was the need to challenge the notion that technology and copyright exist outside the control of society. We need to remind educators that copyright laws and new technologies are intended to serve society, not just to provide financial rewards to the creative industries but also to allow new research and education to flourish. We also need to be mindful that technology is not neutral but a construct of the society we live in and shaped by all sorts of factors, including commercial interests. The quote (often incorrectly attributed to the Canadian philosopher of communication theory, Marshall McLuhan)¹ that 'we shape our tools and then they shape us' illustrates how both technologies and copyright laws are determined by societal norms. Therefore, if there is a belief amongst

educators that either of these are working against society and hindering the free flow of information in the education system, then this needs to be addressed. There are already far too many misunderstandings about copyright, and while it is overly simplistic to view it as a simple set of rules, this book attempts to distil good practice based on practical experiences and equip practitioners with a framework to tackle queries that arise in their day to day work.

The book explores a subject that has fascinated me for over a decade: the overlap between copyright laws, education and new technologies. It has been substantially updated since the first edition, which was written in 2009. This new edition benefits from my collaboration with Chris Morrison, who is currently Copyright Licensing and Compliance Officer at the University of Kent. Chris and I serve on several external committees together and have a shared interest in copyright, digital literacies and new technologies. Therefore the second edition of this book benefits not only from a second writer, but is also a result of our conversations about the role of copyright in the digital age. We both recognize the need to balance the rights and rewards of authors and creators with copyright exceptions so that new ideas, creativity and education can flourish.

This edition includes substantial updates to several of the chapters, in light of changes to copyright law. For example, in the UK, several new exceptions to copyright were introduced in 2014 following the Hargreaves review of intellectual property three years earlier. Copyright issues have also arguably been brought more sharply into focus in the intervening period, in light of attempts in the USA particularly to crack down on internet piracy and hacking. The death of the high profile internet rights campaigner Aaron Swartz, who was potentially facing 35 years in prison for downloading large extracts of the JSTOR database, has highlighted the tension between academic publishers with paywalls and copyright restrictions and the open access movement. Unsurprisingly, the pace of technological change has necessitated updates to several chapters, as new services have been launched.

We noticed that the terminology used to describe the subject matter of the book had changed in the intervening years and so we have updated the book to try to reflect the new language that is used, particularly to describe internet technologies. Chris and I had lengthy discussions over whether the use of the term 'e-learning' was still relevant, given that much

learning now involves some form of technology. However, in the end we decided to retain the title of the book, but throughout the book the wording has been updated to reflect the pervasive nature of technology in education. E-learning is far less of a distinct concept in 2015 and terms such as ‘technology-enhanced learning’, ‘online learning’ or simply ‘learning’ are used interchangeably in this edition. Another significant change to terminology appears in Chapter 5, which now considers copyright in the connected digital environment. It uses the term ‘social media’ in place of ‘Web 2.0’, which was commonly used in 2009, but has become synonymous with the web today. Finally we are delighted to include several new and updated case studies in this edition to the book, which have been written by some of the same authors and some new authors. The case studies provide a valuable addition to the book, illustrating copyright and e-learning in practice from a range of different institutions and countries.

Jane Secker

Note

- 1 The quote is likely to be from Father John Culkin SJ a Professor of Communication at Fordham University in New York and friend of McLuhan. However, many people think McLuhan said if not this, then something very similar.

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Jane Secker and Chris Morrison



Introduction

Material on the subjects of copyright and e-learning is essential reading for those working in education today. Whether you are a staff development officer, a teacher or an administrator, digital technology and the internet will have impacted on the way in which you work. This impact has been felt in both formal and informal learning in school classrooms and staff development units, in almost all educational establishments in the last 15 years. Information and communication technologies (ICTs) have offered teachers new ways of finding, creating and distributing content to learners, extending the physical classroom to include some form of digital space in which teachers can place resources. Educational technologies provide students with new ways of completing assignments, new types of assignments and new ways of interacting with their teachers and peers; learners who study at a distance from their institution can discuss ideas using online forums or can work together on projects using a collaborative writing tool such as a wiki. The development of ICTs has provided students with access to learning and resources at a time and place convenient to them. Those working in student and staff support, in libraries, IT, training and educational development have perhaps seen the greatest changes, with the creation of new roles and responsibilities specializing in educational technologies. Increasingly both learners and teachers are working in what is described as a new learning environment, a description that makes reference to the digital or virtual space.

The classroom of the 21st century often has integrated technology such as smartboards, wireless networks, recording and lecture capture tools. Our learners increasingly use technology in the classroom, bringing with

them laptops, smartphones and tablets with in-built cameras and recording devices, leading them to have different expectations, skills and experience from students of the past. Thus, as the teaching and learning environment changes, so too does the way we teach. However, in this new and exhilarating world of online teaching and learning, copyright is often an issue that is overlooked, or perhaps considered as an afterthought. Whereas online learning is seen as fun and exciting, copyright is perceived as being boring and restrictive; it can be perceived as a barrier that stops teachers putting into practice their teaching innovations. For those charged with offering copyright advice, it can sometimes seem as though they are the person inhibiting exciting new developments. It is also fair to say that if teachers do consider copyright issues, it is usually late in the day, meaning that any problems that occur can be more difficult to resolve. Yet, with some foresight and understanding of the legislative framework in which education operates, copyright need not be a barrier to using new technologies. If online courses are designed with copyright issues in mind at the outset, using principles of 'open practice'¹ then it should not prevent teachers from providing students with the information that they need in a timely and appropriate manner.

This book aims to provide practical advice about a variety of copyright issues for those working in the broad field of online learning. It seeks to challenge the notion that copyright is always an obstacle to teaching with digital technology, or that copyright laws are out of step with the ways in which modern teachers and students wish to work. Ten years ago in the UK, educational organizations such as HEFCE (Higher Education Funding Council for England) and Jisc published guides on copyright and e-learning but aside from this book, there have been few subsequent publications. This contrasts with the growth in publication of copyright guides written to support librarians and archivists, including recent editions from three UK authors Cornish (2015), Pedley (2015) and Padfield (2015). This book aims to bridge this gap and provide an updated guide for practitioners working in the online learning field. It is based on best practice developed by leading institutions that are supporting students in a blended learning environment and includes seven case studies. As learning technologies have spread from higher education to schools, colleges and other learning organizations, a good understanding of copyright and other intellectual property right (IPR) issues remains essential across the sector. This book will help staff to be

more confident that they are using technologies in a way that respects copyright laws and that they are not exposing their institution to the risk of legal challenges from publishers and other rights holders. We also hope that it helps staff to understand how copyright exceptions and licences can help to provide access to resources for their students. It also attempts to provide a framework for dealing with copyright queries and for offering training and support in your own institution. Finally it provides a wealth of further reading and resources. However the book does not replace the legal advice that institutions are advised to seek if they are in any doubt over copyright issues.

Who should read this book?

The intended audience for this book is anyone working in education who uses some form of digital learning technology to support students. This includes both teachers and educational support staff such as learning technologists, librarians, educational developers, instructional designers and IT staff. It is aimed at the entire education sector from primary and secondary schools (known as K-12 in some countries) to higher education, although many examples come from the higher education sector where copyright education and support is usually better resourced. The book may also be relevant to those developing learning resources in the commercial sector, where online learning is increasingly used for staff development. In the public sector, libraries, museums and archives and government departments are also developing and using online learning and so they too should find this book of interest. The book may also be helpful to those working in related areas, such as the health service, who are developing e-learning materials.

It is anticipated that the main audience for this book will be people living in the UK, although where possible an international perspective is included. Technology has broken down many physical barriers to allow access to learning worldwide, so teachers and learners might be geographically separate. Meanwhile, copyright laws are concerned about where an educational establishment is based. Therefore, those providing e-learning support to international students need to consider carefully the copyright laws of their own country. If materials are made available by a UK institution copyright infringement would usually be pursued through

courts in the UK. However, if material is being hosted outside the UK an awareness of the laws of other countries is required. Furthermore, if a teacher moves from one country to another, for example from the USA to the UK, they are well advised to familiarize themselves with the law in the new country. The authors work in the UK and therefore the guidance provided is based on the laws of the UK. In recognition of differing copyright legislation around the world, international examples have been included where relevant. These examples come predominantly from the English-speaking world including the USA, Canada, New Zealand and Australia. The book recognizes that UK copyright law has to comply with European directives and will be impacted by further work to reform and harmonize copyright legislation across the European Union (EU). However, with the exception of Ireland, other European countries are not considered in any detail.

Finally, this book is intended as a best practice guide, and no part of it should be considered to constitute legal advice. The authors are not lawyers and have deliberately written this book as a guide for practitioners, rather than for lawyers or copyright experts. There are some references to legislation and case law, but other books cover these topics in far greater detail. In addition, educational establishments are advised to seek legal advice on problematic copyright issues, particularly those that are likely to lead, or have led to, litigation. It is also advisable to develop clear internal IPR policies in line with the institution's appetite for risk and approach to open practice. Your institutional legal team or legal advisers can help to devise policies such as terms of use and a 'notice and takedown policy' that apply to the virtual learning environment (VLE). More information including example policies are provided in the section 'Further resources' of the book.

Definitions

Before proceeding any further it would be helpful to define some of the terms that are used throughout this book, in order to provide context and avoid potential confusion. The authors both work at UK universities and therefore use terminology commonly used in the UK higher education sector. If you are new to any of the acronyms it is suggested that you refer to the Glossary. The authors are aware that terminology can be problematic

as it is often country specific and in the field of technology it is constantly evolving.

E-learning, online learning, learning or educational technologies

E-learning – ‘electronic learning’ or ‘online learning’ at its broadest level – is defined as the use of computer technology to support teaching and learning. However, this definition suggests that simply using a computer in any part of learning, for example in order to word-process an essay, might be e-learning, and this is not the case. A more accurate definition of e-learning is that it is the use of computer technology as an integral part of the learning, teaching or assessment process. These technologies are often called ‘learning technologies’ or ‘educational technologies’ and the staff that support them might be called learning technologists or educational technologists. In this book the terms e-learning and online learning are used interchangeably to reflect how terminology has evolved in the last six years since the first edition of this book was published.

The most common type of learning technology is some form of e-learning system or platform. In the UK these are called VLEs; elsewhere in the world people use the terms ‘course management systems’ or ‘learning management systems’. VLE is used throughout this book to refer to these systems. The VLE provides a secure online space where resources, learning activities and assessments are made available to students, often for specific courses or modules. Password protection is almost always in place, so that placing material on a VLE ensures that it is restricted to students and staff in the institution. In some instances technology may be replacing some of the face-to-face or classroom-based activities, such as a lecture or a seminar. However, in many instances the online resources and activities complement face-to-face teaching. There are increasing numbers of institutions, particularly in higher education or providing continuing professional development (CPD), which now offer courses delivered almost entirely online. This allows students to carry out their learning at a time and place of their choice rather than attend the institution in person. It should be recognized that the terms ‘e-learning’ and ‘online learning’ include a broad spectrum of models of education.

E-learning platforms

E-learning platforms, or VLEs, are used by the majority of higher and further educational institutions in the UK today. In the schools sector VLEs are becoming increasingly common and are often implemented and supported by local education authorities.

Proprietary commercial systems and free, open-source solutions are used in equal numbers in higher, further and school level education. In the commercial and health sectors e-learning can be supported by a dedicated platform or through using an intranet. E-learning is used for formal education, informal learning and for CPD and staff development activities. In many cases, some form of face-to-face training complements the online support. In general e-learning platforms are password protected so although material is placed on a network, it is not made available on the internet to a wider audience.

Blended learning

Blended learning is a term related to e-learning, used to describe a blend of face-to-face and online learning. True e-learning is in fact fairly rare, and many institutions provide online support to complement their face-to-face teaching. Where 'blended learning' occurs students usually attend traditional lectures or seminars but have access to a variety of online resources. They may undertake online assessments and use discussion forums, but they are not distance learning students. This mode of education is highly flexible, allowing students to catch up if they miss classes. Blended learning is now the default model in higher education in the UK. Access to online resources via the VLE helps students who work and study part-time, students who live some distance from the university campus and students with disabilities who may not be able to access the campus or traditional resources.

Copyright and intellectual property rights

Copyright is one of a number of legal rights known collectively as intellectual property rights (IPRs), which give exclusive rights to the creators and owners of ideas, information and creative works. Related IPRs include patents, trade marks, design rights and database rights. These are not discussed in any

detail in this book, which concentrates on copyright. Copyright covers written materials (known as literary works), artistic, dramatic and musical works, works of architecture, sound recordings, film and video, photographs and websites. This list is not exhaustive and the full list of copyright works as defined in UK law are set out in the Copyright, Designs and Patents Act 1988 (CDPA). Copyright laws exist throughout the world and international copyright agreements such as the Berne Convention (first signed in 1886) ensure there is automatic protection against the copying and selling of works beyond their country of origin. The laws often date back to the early days of publishing, yet in most countries the law has tried to reflect the emergence of new technologies. Copyright laws do not cover ideas in themselves and to qualify for copyright protection the expression of ideas needs to be 'fixed' in some way, for example in written or recorded format.

Throughout this book we also use the term UK copyright law, which is in fact a misnomer, as the UK has three legal systems: English law, which applies in England and Wales; Northern Ireland law; and Scots law, which applies in Scotland. However the relevant copyright legislation is the Copyright, Designs and Patents Act 1988 (as amended) known as the CDPA, which applies across the UK. Substantial changes were made to this act in 2014 and the section 'Further resources' includes a link to the act, where the amendments can be seen. Copyright infringement cases are usually resolved under civil rather than criminal law, so people are unlikely to be sent to jail for copyright infringement unless it is deliberate and commercial in nature.

Copyright officers

At several points in this book we use the term 'copyright officer'. In the UK, there is no requirement for an educational establishment to have a copyright officer and similarly there is no formal definition or qualification for copyright officers. A recent survey found that in the library and cultural heritage sector in the UK, 64% of institutions had a person with specific responsibility for copyright matters (Morrison and Secker, 2015). The job descriptions of such people vary considerably, as does their background. Many copyright officers in UK higher education establishments sit within the library or information services division. However, there is considerable

variation in the expertise of these people, the type of queries they are asked to deal with, and the ultimate responsibility and strategic influence that they have within their organization (see Chapter 6).

Born digital content and digitization

Another important concept central to this book is that of 'born digital' content, a notion which separates content created in digital format from that which is digitized from a print or analogue source. Born digital content is discussed in greater detail in Chapter 4.

Overview of the content

Chapter 1 provides an overview of copyright and other IPRs as they relate to e-learning in several English-speaking countries. It has been substantially updated to cover recent changes to copyright legislation in the UK and elsewhere in the world. It also provides background information about the development of online learning, and its relationship to face-to-face teaching and distance education. This chapter explores how the digital environment differs from the classroom and considers issues such as copying for educational purposes and what the law permits. Finally it provides details about new developments in copyright such as the open access and Creative Commons movements. The case study comes from Brunel University, which appointed a copyright officer to tackle these and other issues in 2004.

Chapter 2 considers how to re-use text-based content in e-learning. It examines the situation in the UK where the Copyright Licensing Agency (CLA) licences permit published materials to be digitized for education. Results from a survey conducted in 2009 and repeated in 2015 into scanning activity in higher education are presented. These demonstrate the significant growth in scanning of published works in the intervening period and the challenges encountered by higher education librarians to deliver copyright compliant content to teaching staff. The chapter also briefly considers the situation in other countries, specifically the USA, and the digitization of archival or other unpublished works and the copyright issues associated with orphan works. Two case studies are included in this chapter, one from Middlesex University examining scanning and copyright

services provided by their library, and one examining electronic reserves in the USA.

Chapter 3 looks at digital media: video, images and sound, and how these types of resources might be used in e-learning; it considers, for example, the digitization of off-air recordings under the Educational Recording Agency (ERA) licence and the use of on-demand TV services. It also explores the use of lecture capture and the copyright and IPR matters raised by this technology. It considers the creation of digital media in-house and provides a useful list of digital media resources available to the education community. The case study is from University College London (UCL) with a discussion of some of the complexities of negotiating rights to deliver content worldwide using open licences.

Chapter 4 looks at 'born digital' resources and outlines the copyright issues concerned with this type of content. Increasingly, born digital content is embedded with a variety of digital rights management technologies designed to limit the ways in which that content can be re-used. This chapter covers specific concerns that need to be addressed when using different types of digital resources, including external websites, licences for electronic resources and lecturers' own content. It includes a case study from the copyright officer at the University of Auckland in New Zealand who describes the operation of the library's course reading list service.

The digital environment is changing rapidly and Chapter 5 examines copyright in the connected environment, specifically focusing on social media and emerging trends such as massive open online course (MOOCs). The chapter provides an overview of these technologies and the changing digital environment. It then considers questions such as whether to rely on third-party-hosted services, where the copyright lies in works with multiple creators, and the copyright implications if individuals contribute content to social media services. The chapter provides examples of how several social media services handle copyright in order to protect their own rights and how they handle others uploading content to their services. Examples from some of the most popular sites such as Flickr, Facebook and Wikipedia are included. The chapter includes a case study from Zurich International School examining how students are encouraged to use emerging technologies in a responsible way that respects copyright law.

Finally Chapter 6 discusses copyright education and training for staff and students in educational establishments, referred to as 'copyright

literacy'. Arguably the key to developing effective, high quality online learning relies on embedding an understanding of copyright and intellectual property laws into the institution's culture through staff development. However, students also need a greater understanding of copyright issues as they use technologies in their studies and go out into the workplace. The chapter considers who should deliver copyright education, the support that they require, the intended audience and ways of providing it – for example, the different approaches to copyright education needed by teaching staff in comparison with administrative staff or PhD students. Methods of delivery are considered, including face-to-face workshops, online learning, and the role of printed guides and leaflets. Finally this chapter considers how to deal with copyright queries and provides sources of further advice and support. It includes a case study from the authors, who have developed an interactive games-based approach to copyright education, which has proved highly effective as a way of engaging learners.

One of the strengths of this book is that it includes case studies from several high profile UK universities, and from educational establishments in the USA, New Zealand and Europe. The case studies explore issues raised in each chapter in more detail and provide specific examples of best practice. They are:

- ◆ Case Study 1 The copyright officer at Brunel University London
- ◆ Case Study 2 Digitizing course readings at Middlesex University
- ◆ Case Study 3 Electronic reserves and copyright in a US university
- ◆ Case Study 4 Open course creation at UCL
- ◆ Case Study 5 The Course Reading List Service of the University of Auckland, New Zealand
- ◆ Case Study 6 Zurich International School, Switzerland – e-learning and copyright
- ◆ Case Study 7 Copyright the card game: a games-based approach to copyright education.

Throughout this book the authors assume that readers have no previous knowledge of UK copyright law or the questions relating to copyright and e-learning. References are included at the end of each chapter and suggested further resources are included at the end of the book. A glossary is provided, which explains technical terms and acronyms (although these

are spelt out in the main text on the first occasion of their use). Wherever possible the authors have tried to avoid legal jargon and offer pragmatic advice based on good practice in the sector and their collective experience.

Note

- 1 Open practice or practices are defined in the Glossary and discussed in detail in the book (see Chapter 1, page 41).

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Abbreviations and acronyms

ALA	American Library Association
AUCC	Association of Universities and Colleges of Canada now known as Universities Canada
BIS	Department for Business, Innovation & Skills (UK Government department)
BUFVC	British Universities Film & Video Council
CAL	Copyright Agency Limited (Australian reprographic rights organization)
CCC	Copyright Clearance Center (US reprographic rights organization)
CDPA	The Copyright, Designs and Patents Act 1988 – the copyright legislation in force in the UK
CILIP	Chartered Institute of Library and Information Professionals
CLA	Copyright Licensing Agency (UK reprographic rights organization)
CLARCS	Copyright Licensing Agency Rapid Clearance Service
CLNZ	Copyright Licensing New Zealand
CONFU	Conference on Fair Use
CPD	continuing professional development
DACS	Design and Artists Copyright Society
DCLG	Department of Communities and Local Government
DCS	Digital Content Store; pilot service for universities in the UK from CLA, to be a central store of digital readings
DOI	digital object identifier
DRM	digital rights management

ERA	Educational Recording Agency
EU	European Union
HEI	higher education institution
HESA	Higher Education Statistics Agency
ICLA	Irish Copyright Licensing Agency
ICT	information and communication technology
IPO	Intellectual Property Office (UK Government department)
IPR	intellectual property rights
Jisc	Joint Information Systems Committee
LSE	London School of Economics
MOOC	massive open online course
NLA	Newspaper Licensing Agency
PPL	Phonographic Performance Limited
SCONUL	Society of College, National and University Libraries
SEPS	Second Extract Permissions Service
TADC	Talis Aspire Digitised Content
UCISA	Universities and Colleges Information Systems Association
UNESCO	United Nations Educational, Scientific and Cultural Organization
URL	uniform resource locator
VLE	virtual learning environment
WIPO	World Intellectual Property Organization



Glossary

Copyright Hub A non-profit organization launched following the Hargreaves review of intellectual property in the UK. The Copyright Hub is building technology to link copyright works, owners and users digitally, with the intention of making the process of getting and giving permission quicker and easier for everyone.

Copyright officer Many organizations in the cultural heritage sector employ a named individual who takes responsibility for copyright issues including training, advice, policy development and compliance checks. In the UK there is a range of professionals who take on this role, and a number of job titles. Quite a high percentage of them are library and information professionals. There is no recognized qualification for this role.

Dark web World wide web content that exists on dark nets, that hide the IP addresses of the servers that run them. Thus they can be visited by any web user, but it is very difficult to work out who is behind the sites. You cannot find these sites using search engines such as Google or Bing.

Deep linking The process of linking to a page within a large website, bypassing the home page of the site. Deep links are often more likely to change, for example when a website is reorganized, and some organizations expressly prohibit deep linking in their website terms and conditions.

Digital literacies Jisc defines digital literacies as the capabilities that fit someone for living, learning and working in a digital society. They overlap with other learning literacies such as information literacy and media literacy and are underpinned by functional ICT proficiency. The capabilities include the appropriate use of technology for communication, collaboration, learning and

scholarship, knowledge creation and an awareness of your digital identity and wellbeing.

E-reserves A US term for making available extracts from library materials in electronic format for students on specific courses. 'Reserves' is the US term for a short loan collection and hence 'electronic reserves' are electronic short loans.

Fair dealing A concept enshrined in UK law that relates to how a fair and honest minded person might treat a work and whether that treatment would have a negative impact on the owner of the work. Many of the exceptions to copyright in the UK are subject to fair dealing, which involves making a judgement for each individual case.

Fair use US term, often confused with fair dealing, which allows for exceptions to copyright law for societally beneficial purposes including education. Unlike fair dealing it involves the application of a broad fairness test, rather than stipulating a finite list of possible uses such as quotation or criticism and review.

Moral rights The right to be identified as the author of a work (the right of paternity), the right to object to derogatory treatment of a work (the right of integrity), the right not to be identified as the author of someone else's work (false attribution), and the right to privacy of certain photographs or films. In the UK, under the CDPA, moral rights need to be 'asserted' in a formal written statement otherwise they do not apply. They are intended to protect an author's creative identity and in some countries last beyond the duration of copyright, so ensure that a work cannot be falsely attributed even for older, public domain works.

Notice and takedown policy Institutions that make content available on the internet often use these policies to mitigate against claims of copyright infringement. This is a process that allows rights holders to inform the website owner of a possible copyright infringement, and states that the website owner will remove the content while an investigation takes place. Sample policies from several organizations are included in the section 'Further resources'.

Non-commercial usage Often difficult to define in practice but is described by Creative Commons as activity that is 'not primarily intended for or directed towards commercial advantage or monetary compensation'. Many copyright exceptions around the world specify

that usage should be non-commercial and this test relates to specific activities rather than the broad goals of individuals or organizations. Generally, educational activities are considered non-commercial as the primary aim is not to make a profit.

Open educational resources Open educational resources are usually digitized materials offered freely and openly for educators, students and self-learners to use and re-use for teaching, learning and research.

Open practice(s) A range of open educational activities, such as developing and using open educational resources, developing open courses such as MOOCs, practising open scholarship through sharing research openly (open access) and using open-source technologies.

Public domain Material where the copyright has expired is considered to be in the public domain. For example, in the UK a published literary work is said to be in the public domain when the author has been deceased for more than 70 years.

Risk management Approach used by organizations to deal with potential issues involving risk, based on an assessment of the likelihood they will occur and the impact of the consequences. With regards to copyright matters it involves considering a range of factors, including the type of work being used, its economic value, the likelihood of a rights holder finding out about an infringement, the type of remuneration they might expect, and the likelihood of a court action being taken. Risk is about more than just economic damage and involves consideration of the potential damage to an organization's reputation.

Risk-based approach Making decisions based on consideration of a range of factors as described above. It involves tolerating that some infringement may happen and that there are appropriate measures in place to mitigate the consequences.

Third-party rights or material Content that is owned by someone other than the person copying, communicating or receiving it. For example, a lecturer prepares a PowerPoint presentation and includes several images she has taken from the internet which belong to another organization. In this case the third party is neither the lecturer nor the student receiving the PowerPoint, but the organization that owns the image sourced from the internet.

1

E-learning and copyright: background

Introduction

This chapter considers copyright in the digital environment, and its relationship to recent developments in education. It provides an overview of the major differences between copyright laws in several English-speaking countries in the world and how they apply to online learning. The focus of this book is on the UK, but it briefly discusses copyright laws in the USA, Australia, Canada and New Zealand. While the book does not replace any legal advice that those developing online learning might need to obtain, it considers how copying can be undertaken for educational purposes. This chapter focuses on various exceptions to copyright law (activities such as copying that can be done without the rights holder's permission) and the impact of copyright issues on face-to-face teaching. The chapter also defines e-learning (or online learning) for the purposes of this book. This definition includes the use of the internet, intranets and secure computer networks such as VLEs, course management systems and other online learning environments. This chapter considers the different effects copyright law has on teaching in the digital environment when compared with the classroom. It also explores new developments in scholarly publishing, including the open access movement and open-source software, along with the development of open licensing schemes such as Creative Commons. This chapter includes the first case study in the book, from Brunel University, where the institution appointed a copyright officer in response to the copyright challenges they were facing.

Recognizing the copyright dilemma

Much of what teachers wish to do in an online learning environment is similar to what they have traditionally done in the classroom. They give students learning activities such as reading, critiquing a work of art or consulting a manuscript source. Students may work individually or in groups. However, online technologies provide huge opportunities to broaden the reach of education by allowing students to participate in learning regardless of their geographic location. Digital technology also allows students to work together asynchronously at a time and place convenient to each learner. Used effectively, e-learning is far more than simply the use of an online document repository, it can be an engaging, online, interactive learning environment. Many of the copyright challenges to e-learning relate to the creation of an online library of resources. Digital technology offers the teacher the opportunity to provide students with perfect copies of copyright works such as digitized books, music files or a piece of digital video. Early digital library research projects, such as those funded by Jisc (the Joint Information Systems Committee) in the 1990s as part of the Electronic Libraries (e-Lib) programme, recognized the complex copyright issues that the digitization process could cause.¹ Many early digitization projects in libraries throughout the world deliberately concentrated on using material that was out of copyright, thus avoiding the need to seek copyright permissions. Seeking such permission is time consuming and potentially problematic if the owner of a work cannot be traced. However, in the UK, Jisc launched several projects as part of e-Lib to tackle this issue head on, looking at what at the time was called 'on-demand publishing' and 'electronic short loan'. These various projects ultimately led to the establishment of a service called Heron (which stood for Higher Education Resources On-demand) funded initially by Jisc. In 2002 Heron became a commercial service providing digitization and copyright services to higher education primarily in the UK until 2015. The services have subsequently been acquired by the Copyright Licensing Agency (CLA) and Heron will be wound up in 2016 and incorporated into new services offered by CLA. These developments are discussed in greater detail in Chapter 2. Needless to say the reason that Heron was developed in the first place was as a response to the growing demand to provide students with digitized access to copyright content.

Through early projects in e-learning and digital libraries, Jisc became

increasingly aware of the legal ramifications of working in a digital environment. Consequently it launched Jisc Legal in 2000 to provide advice and support on a wide range of legal concerns for the further and higher education community. Until the end of 2014 the Jisc Legal website (www.jisclegal.ac.uk) provided a wealth of legal advice and guidance over the use of technology in education, including copyright issues. In January 2015 the service was reduced following funding cuts and replaced by the Jisc Customer Services Division, which has seven geographically based teams around the UK. The team employs a subject specialist focusing on technology and the law, although since late 2014 the helpdesk support for copyright and IPR queries has been more limited. However, Jisc still provides written guidance on legal issues, and *A Quick Guide to Intellectual Property Rights in the Digital World* is one of the resources produced by this team in 2015 (Jisc, 2015). Other suggested resources for keeping up to date in this field are listed in the section 'Further resources'.

The development of e-learning in the UK

Before considering copyright issues any further, this next section will briefly provide an overview of developments in the field of online learning. A list of general readings on this topic is provided in the section 'Further resources'. Technology has become increasingly important in education and training, with the proliferation of digital tools to support administration and online learning, and the widespread availability of high-speed broadband in many places around the world. Technologies to enhance and support teaching and learning have had the greatest impact in the higher education sector, with significant investment from funding bodies such as Jisc, which has provided the infrastructure through the Janet network and research and development funding for projects and initiatives. The Janet network is dedicated to the needs of education and research in the UK; it connects the UK's education and research organizations to each other and the rest of the world through links to the global internet. Thus every higher education institution (HEI) in the UK has invested significantly in digital technologies to support teaching and learning. Students' face-to-face learning is primarily supported through the use of online learning platforms (known as VLEs in the UK and learning or course management systems elsewhere in the world). The 2014

survey on technology-enhanced learning in higher education in the UK by the Universities and Colleges Information Systems Association (UCISA, 2014) showed that Blackboard Learn is the most widely used commercial institutional VLE in the UK (used by 49% of responding HEIs), however 62% of institutions use the open-source system Moodle. In the past five years there has also been a growth in the number of online courses offered to students who may rarely or never attend a UK HEI, or who may be taught at an overseas campus. VLEs are the main teaching platform used to support the increasing globalization of the UK higher education sector. The number of massive open online courses (MOOCs) offered in the higher education sector has grown in recent years; these are free online courses offered by traditional universities, but open to students from around the world. MOOCs present specific copyright challenges. They are considered in the case study in Chapter 3 and discussed in more detail in Chapter 5.

In reality, entirely online learning, as defined in the Introduction, is rare, but most educational establishments have recognized that providing online support for learners and face-to-face teaching offers many rewards for teachers and learners. The use of technology is largely linked to the need to provide students in higher and further education with greater flexibility as to where and when they can access learning. As a result of the funding cuts and introduction of fees in the higher education sector there are now far higher numbers of students who work while studying, so students increasingly need to take advantage of convenient, electronic access to course content. Meanwhile, academic institutions can reduce their administrative burdens by distributing content online rather than in paper format.

In the further education sector most colleges also have VLEs, the most common platform being the open-source system Moodle. Essentially what these systems provide is a relatively easy-to-use platform to distribute content to learners, with built-in educational tools or activities to engage them and facilitate learning. These include discussion tools, assessment tools, file uploads and collaborative workspaces. There has been a significant decline in public funding in the further education sector in the past five years. However the Further Education Learning Technology Action Group recommended in June 2014 that a minimum of 10% of all publicly funded programmes should be delivered online by 2015–16, demonstrating that there has been a significant investment in online

learning in this sector. Jisc are currently working on a programme to implement this recommendation in the FE sector (Jisc, 2016).

In the school sector the use of learning technologies has been slower to develop. There was some progress from 2006 to 2010 following investment from central government through Becta, but funding cuts following the general election in 2010 led to the closure of this agency. Becta's role was to ensure that technology was used effectively in the British education system and it ran events and produced numerous resources to help encourage the use of e-learning. Developments in the school sector in this period were driven by the UK Government's e-strategy *Harnessing Technology* (DfES, 2005), which was launched in 2005 and sought to provide a 'cradle to grave' approach to using technology in learning. The e-strategy also set the expectations that:

- ◆ by spring 2008 every pupil should have access to a personalized online learning space with the potential to support an e-portfolio (provided by their local authority)
- ◆ by 2010 every school should have integrated learning and management systems (a comprehensive suite of learning platform technologies).

Following the election in 2010, the Department for Education's approach to technology-enhanced learning has been largely silent. Nevertheless, as a result of earlier investment 'learning platforms' or VLEs are increasingly common in UK schools along with the use of other classroom technologies such as interactive whiteboards. However, the current government policy has focused on enhancing the computing curriculum and developing the capacity of teachers to support 'digital literacies' (see the Glossary for more details) rather than on using online learning.

Online vs. 'blended' learning

Many HEIs were drawn into investment in online learning technology by the potential of supporting students at a distance, which until there were developments in technology had remained the preserve of specialist institutions such as the Open University. The potential of entirely online learning has become a reality in the last five years, and can be seen as a

way of expanding student numbers without the need for additional teaching space. It also meets the growing demand for education throughout the world, but the financial investment associated with fully online distance education is significant. In 2005 the UK 'e-university' collapsed at a reported cost of over £500 million. This led some institutions to reconsider how they might use technology and focus on what is often called 'blended learning'. This is defined in the Introduction as the support of on-campus face-to-face students with an e-learning platform that enables them to access lecture materials, resources and readings and communicate with their peers and tutors outside the classroom. This model has become increasingly common as higher education has expanded and the way students manage their studies has changed. Since 1992, there has been significant expansion in higher education in the UK and many other English-speaking countries, and participation levels in higher education in the UK are now approximately 50%. With increasingly large class sizes and more students studying while working part (or even full) time, online and blended learning open up higher education and provide students with flexibility to learn at a time and place convenient to them. Thus, technology has been linked to the widening participation agenda in the UK, in which students from non-traditional backgrounds enter universities. Student retention can be a key issue and many e-learning systems include administrative functions that allow student participation to be tracked to alert tutors to potential problems with student engagement early on.

In 2012–13 the higher education landscape changed again in the UK following the introduction of full fees for undergraduate students, whereby most students pay up to £9000 per year for their tuition. A report by Universities UK noted a 6.3% decline in student numbers (Universities UK, 2014) although it recognized a growth in the UK's international higher education market share. In the last five years there has been a growing globalization of the UK higher education market with some institutions developing entirely online courses for students based overseas, and others expanding internationally by setting up overseas campuses, or working in partnership with other universities around the world. In 2013–14 Universities UK reported that there were 638,850 students studying for UK qualifications, but based outside the UK – the highest number of students was based in Malaysia. This figure has grown by 65% since 2008 and while more than half are registered with an overseas partner institution, almost

120,000 are studying by distance, flexible or blended learning (Universities UK, 2015). Research was also commissioned by the UK Government's Department for Business, Innovation & Skills (BIS) in 2014 to explore the value of transnational education to the UK economy. This study found 63 HEIs (of around 150 universities in total) reporting that they run active transnational education programmes, which bring in revenue of almost £500 million (BIS, 2014). Since 2010 there has also been a growth in the number of private for-profit higher education providers. This creates specific copyright challenges, blurring the line between not-for-profit education and commercial activities.

E-learning and digital resources

Learning technologists have long advocated that VLEs should be interactive environments to enhance learning, where students complete activities and assessments rather than simply access content. However many teachers still use a VLE simply as a digital document repository. Materials such as PowerPoint slides, lecture notes and essential readings are often uploaded onto the learning platform and these have replaced hard copy handouts in most institutions. A typical HEI digital course site therefore acts as an electronic file store for materials which were previously included in course handbooks or given out in the classroom. In recent years institutions have invested in lecture capture systems, so not only can students access slides from a presentation, but a recording of the lecture will also be made available to them. In 2012 51% of HEIs reported having institutionally supported lecture capture tools; by 2014 this figure had risen to 63% (UCISA, 2014, 28). Expectations about the quality of video and audio production have increased in line with the sophistication and accessibility of recording and content delivery technologies. Therefore many learning technology teams now work alongside more traditional audiovisual technicians to provide quality services in this area as the technology improves and the costs are reduced. Media streaming services are now available in 65% of all HEIs (UCISA, 2014) allowing video and audio to be delivered over university networks.

The wide availability of digital resources, be they useful web-based resources, e-journals or e-books, leads many teachers to try to include as many different types of learning resources as are appropriate within the

VLE for the convenience of their students. Librarians are aware that students and academic staff visit the library building less frequently than in the past to access resources, as many prefer the convenience of access from their own devices at their chosen location as allowed by institutional authentication systems. It is therefore no surprise that teachers who use the VLE want to include direct links to access full-text materials, for example from the course reading list. Reading list management systems were used by 55% of HEIs in 2014 (UCISA, 2014), which makes it relatively easy to add links to online resources, through integration with library systems. However, many teachers remain unaware of the complex licensing arrangements negotiated by libraries that allow them to access resources such as e-journals and e-books. In fact with more sophisticated authentication procedures and federated search tools, many teachers are not aware when they are using subscription resources rather than content freely available on the internet. The desire to provide students with as many resources as possible to help their learning can inevitably lead to copyright issues. Teachers will argue that they are simply trying to help students get access to material, but the ease with which content can be downloaded from the internet or a library subscription resource, or even scanned from hard copy, makes it all too easy to break licence agreement terms and conditions or infringe another's copyright. The general perception that there is an overarching exception for educational or not-for-profit use prevails in education, particularly outside higher education.² Additionally many teachers incorrectly believe that because they are distributing content to students via a secure network this provides them with greater legal protection than making material available on the open internet.

Our learners: 'the Google Generation'?

Before turning to copyright laws, it is also worth briefly mentioning the ongoing research that has looked at the characteristics of students today. Several studies (Prensky, 2001; Research Information Network, 2007; Rowlands et al., 2008) suggested that young people have a greater level of comfort around using technology than earlier generations leading to the coining of the term 'digital natives' (among others³), though some researchers have disputed the concept of digital natives finding it too simplistic (Jones et al., 2010). White and Le Cornu (2011) proposed the idea

of a continuum to describe how people interact with the web as one of 'visitors and residents', which is neither age nor background specific, but dependent on people's motivation and context. While it is true to say that in much of the developed world many young people have greater access to technology, perhaps more worryingly, there is also some evidence to suggest that young people have a different (or lack of) understanding of copyright law than those from previous generations. Rowlands et al. (2008, 301) qualified findings from earlier research which suggested that young people did not respect intellectual property, saying they found this to be only partly true. However, they noted: 'Young people feel that copyright regimes are unfair and unjust and a big age gap is opening up. The implications for libraries and for the information industry of a collapse of respect for copyright are potentially very serious.' Meanwhile in 2013 the Intellectual Property Office (IPO) in conjunction with the National Union of Students (NUS) conducted a survey of over 2000 students in the UK into their attitudes towards and knowledge of IPR, including copyright (NUS, 2013). The findings suggested that most students did not feel they knew enough about IPR for their future careers and that IPR education is generally not embedded in their course in most institutions. Students believed IPR education focused almost entirely on plagiarism issues and only in law departments is copyright covered in any detail. These findings suggested that students recognized the value of learning about IPR, particularly with the increasing focus on innovation and entrepreneurship where students want to understand how to protect their own ideas.

Clearly students expect their learning resources to be freely available to them, either on the internet or in their online learning environment. The payment of fees has brought this more sharply into focus. However, many students have a limited understanding of why copyright might present those delivering or supporting their teaching with challenges. In the future we may start to see this change with an increased focus on entrepreneurship and innovation, and as students become more interested in how to protect their own ideas. Chapter 6 will discuss copyright education and suggest ways it can be delivered for different audiences, including students.

Copyright and educational copying

This section introduces the legal frameworks in which educational practitioners operate. It will compare how copying for online learning can be undertaken within the law in the UK, and then contrast this with the law in Ireland, the USA, Australia, Canada and New Zealand. For practical reasons this book cannot provide a comprehensive overview of the legal position across the world. Therefore, the focus is deliberately on the major English-speaking jurisdictions in the world to provide advice for e-learning practitioners in those countries. Other books that provide detailed copyright advice for specific countries are listed in the section 'Further resources'. Copyright legislation in the former Commonwealth countries (including Canada, Australia and New Zealand) is based on UK law and so is broadly similar. The key differences in the laws are discussed later in the chapter. In the USA, the law differs significantly because the 1976 Copyright Act includes the concept of 'fair use' to cover legal uses of copyright content without the rights holder's permission, whereas in the UK the tradition of 'fair dealing' is used (see 'fair dealing' section on pages 18–19). Fair use is generally seen as a more permissive approach to copyright for it allows copyright material to be copied for any educational use as long as a set of 'fair' criteria apply. Fair dealing, on the other hand, also requires application of a test of fairness, but only applies to a finite list of activities as defined in the legislation (such as criticism and review, or illustration for instruction). There has been some discussion in Europe about introducing the concept of fair use, but to date it seems unlikely to be adopted following significant push back from rights holders. Its introduction in the UK was also explicitly rejected in the Hargreaves Review (2011). Significantly, in the UK and many other countries, much educational or classroom copying still requires institutions to take out a licence from the respective reprographic rights body, as UK law does not include the 'fair use' concept.

An important query often raised by teachers who are developing content they want to deliver throughout the world concerns the jurisdiction that applies when they are copying material. Does the law of the country in which they work take precedence over the law of the country where the content is accessed by the end user? The most pragmatic way to approach this is that if you are developing an online course at a UK institution the laws of the UK apply (or if you are developing a course in a US educational

institution US law applies). This is the approach that many institutions take when considering whether exceptions apply even if students might be accessing this material from a different country. This is primarily a risk-based position prompted by the un-harmonized nature of global copyright laws; the nature of this disjointed system is presented in great detail by Kenneth Crews in his World Intellectual Property Organization (WIPO) report on the impact of limitations and exceptions on libraries and archives (Crews, 2015). While further in-depth examination of the fragmented nature of cross-border access to copyright content is outside the scope of this book, it is worth noting that many licences have territorial restrictions in them and this is currently the focus of European policy debate over the creation of a European Digital Single Market (European Commission, 2016). These restrictions in particular apply to licences and services offered by commercial organizations, such as broadcasters and audiovisual production companies, whose business models rely on providing content at different times, different costs and in different formats from country to country. An example of how this has affected education is the ERA licence in the UK, which provides access to free-to-air broadcast material, but only for students geographically located within the UK. E-resource licences (see Chapter 4) increasingly provide access to authorized users based in a range of countries but this has proved a challenging task for collective management organizations like the ERA attempting to negotiate cross-border licences for entire classes of creative work. In the UK the CLA has sought to address this issue through a trial extension to its higher education licence that covers students based at overseas campuses. The pilot is still ongoing; one of the requirements is that students need to be registered at the UK institution to be covered by this licence. Further details about educational licences in the UK are discussed later in this chapter as well as in context throughout the book.

Distance learning has always required a specific focus on copyright issues, and units or institutions dedicated to distance education (like the Open University) have rights and permissions departments to clear content for use, and considering application of exceptions. However, as we have seen earlier, many HEIs have ventured into the realm of online education to improve the effectiveness of their teaching and capitalize on the international market for UK education. As a result the model for traditional educational establishments has changed from one where learning materials were either made available at a physical location (a library) for on-campus

students, or were deliberately compiled for off-campus students in conjunction with distance learning teams who were adequately resourced to consider copyright issues. This responsibility now often falls on the shoulders of teaching staff who want to provide compelling teaching content in digital format, but find it difficult to respond appropriately to the many legal questions (including about copyright) that arise. However, the potential for digital technology to empower both teachers and students in this new context is significant, and with the appropriate training and support (see Chapter 6), copyright need not be a barrier to creative teaching.

In general there are a number of ways that copying works can be undertaken without infringing copyright laws. These include copying:

- ◆ very small amounts of a work (copyright protects a substantial part of a work although no definition of what 'substantial' might be is provided in UK law and it does not relate simply to quantity)
- ◆ where copyright has expired; copyright protection is limited by duration to a set number of years (a summary of durations as they apply to different kinds of works is listed in Table 1.1), thus copying of a work which is out of copyright and in the 'public domain' is permitted
- ◆ under a statutory exception; for instance, copying in accordance with 'fair dealing' in the UK for the purposes of quotation, criticism and review
- ◆ under a collective licence, which gives permission from a broad range of copyright holders to carry out activities restricted by default under law – for example the CLA offer licences for the education sector to permit multiple copying of published works within limits
- ◆ under some other form of licence issued by the rights holder, such as a licence agreement for an electronic resource or direct permission obtained for use of a specific piece of content
- ◆ an 'orphan work' using the UK's Orphan Work Licensing Scheme or the EU Directive on orphan works (see above and Chapter 2).

It is interesting to trace how different countries have dealt with educational copying since the advent of the internet, and particularly how they allow teachers and educational establishments to make material available via an online learning platform. While not attempting to be comprehensive, the

later part of this chapter includes details from a selection of English-speaking countries. It aims to highlight how technology is causing governments around the world to reconsider their copyright laws and try to bring them up to date. Yet, despite the need for changes to accommodate and support teaching practices, the pressure to amend the law often seems to be coming from well resourced, commercial lobbyists. In particular the media industries such as global publishing, music and film companies that flourished in the 20th century are attempting to combat internet piracy and illegal file sharing by persuading policy makers to strengthen copyright law. In trying to clamp down on this type of copying, legislators could well be causing further problems for educators who simply want to allow students and researchers to be able to access information in the most convenient format. As educational content is increasingly provided in digital format, the copyright and licensing regime in countries throughout the world has proved burdensome for administrators and librarians. However there are signs that a more progressive copyright regime might be evolving as demonstrated in the changes in the UK following the Hargreaves Review. Hopefully future debate will reveal a route to a fairer balance between the needs of education and the need for copyright owners to receive just rewards for their endeavours, and that this will be recognized by governments around the world as they undertake copyright reforms. Nonetheless, those in education need to be mindful that there is a powerful lobby from commercial publishers and the movie and music industry that continues to push back against copyright exceptions. An important aspect of copyright education is to instill ethical use of copyright material in educational institutions in order to challenge the view that exceptions undermine the creative industries' ability to exploit copyright works.

A brief introduction to UK copyright law

These next sections will explore copyright in greater detail, looking at why the laws exist, what types of works are protected, and for how long and what activities are permitted for educational purposes in the UK. This part of the book has been updated following amendments in the UK to the Copyright, Designs and Patents Act 1988 (CDPA) in June and October 2014, which provided several new education-related copyright exceptions and amendments to a number of existing exceptions. These changes⁴ followed

an independent review of intellectual property law launched by the Prime Minister in November 2010 and conducted by Professor Ian Hargreaves of Cardiff University (Hargreaves, 2011).

This book focuses on copyright and e-learning and is therefore not intended as a comprehensive guide for librarians to copying under the law. See the section 'Further resources' at the end of the book, but notable authors who have produced invaluable guides for UK librarians or archivists include Padfield (2015), Pedley (2015) and Cornish (2015). The works of Padfield and Cornish are useful supplements to this book as they include questions and answers to common copyright dilemmas that those dealing with copyright queries are frequently asked about. Meanwhile Pedley's *The E-Copyright Handbook* (2012) is particularly useful for those interested in relevant case law on digital copyright. This book seeks neither to replace nor replicate these existing publications, but rather to provide a focus on how copyright issues impact specifically on online learning.

The first ever copyright law was implemented in Great Britain at the start of the 18th century. This was intended to provide intellectual and financial incentives for the production of cultural works by providing limited protections to those who create, and invest in the creation of them. The legislation – called the Statute of Anne – was introduced into British law in 1709 and its creation was prompted by the invention of the printing press and the need to regulate copying of literary works. The first words of the statute said that it was 'an act for the encouragement of learning' and even though copyright law has changed a great deal since then it still has a major impact on those working and studying in educational establishments. Since 1709 policy makers around the world have tried to strike the balance between adequate copyright protection against theft and piracy, versus sufficiently generous educational and societally beneficial provisions that foster the free flow of ideas. The need for balance was the main focus on the Hargreaves Review (2011), which sought to modernize UK copyright laws in the digital age. In the UK, copyright does not require a registration process and provided that works meet certain criteria, they then qualify for automatic copyright protection on their creation. These criteria state that the work must be:

- ◆ original
- ◆ fixed or recorded in some form

- ◆ created by a qualified national (effectively this means any person).

Copyright offers protection and certain exclusive rights to the owner or owners of the work. These exclusive rights are the right to:

- ◆ copy the work
- ◆ issue copies to the public (essentially to publish the work)
- ◆ rent or lend the work to the public
- ◆ perform, show or play the work in public
- ◆ communicate the work to the public (which means to put it on the internet or broadcast it)
- ◆ make an adaptation of the work or do any of the above in relation to an adaptation.

Usually the primary author (or authors) owns the copyright to a work, but this is dependent on the nature of the work (see Table 1.1). In the case of literary works such as books, it is often fairly clear who the author is. However, identifying the owner of copyright for works such as films and sound recordings can become more complex. For example in the case of a musical sound recording, the author of the work (the recording) is the producer, and the company that made the arrangements for the recording (e.g. paid for the studio) owns the copyright in it. The performances as captured on the sound recording give rise to an additional set of 'performance rights' for the featured artists. This is all in addition to the separate copyright protection afforded to the underlying musical work and

Type of material	Duration of copyright
Literary, artistic, dramatic and musical works	70 years from the death of the author, or 70 years from publication/performance if no named author
Sound recordings	70 years from the date of recording
Films	50 years following the last to die of: the principal director, producer, author of screenplay, composer of soundtrack
Broadcasts	50 years from the date of broadcast
Typographical layout	25 years from publication
Unpublished works	70 years from the death of the author or 31 December 2039 – whichever is longer

the lyrics (in the case of a song), the authors of which are often different people to the producer or the artists. In the case of films the producer and the principal director are the author of the work. Cornish (2015, 121–9) provides an excellent overview of the issues surrounding copyright ownership, many of which were complicated by the changes to UK copyright law throughout the 20th century. Anyone trying to identify the copyright holder in any given work should be aware that as a property right, copyright can also be transferred (sold) to someone other than the author. In many cases the copyright owner of a work can be identified from the copyright symbol placed somewhere prominently on the work (for example, © Jane Secker with Chris Morrison 2016), but its use is not a prerequisite for copyright protection in the UK or for much of the world.

Cornish (2015, 42–3) provides greater detail about the duration of copyright and should be consulted for specific queries such as protection for authors from outside the European Economic Area and protection for works with multiple authors. Even when copyright has expired, moral rights may remain. The moral rights are the right to be identified as the author of a work (paternity), the right to object to derogatory treatment of a work (integrity), the right not to be identified as the author of someone else's work (false attribution), and the right to privacy of certain photographs and films. See the Glossary for more details.

In addition to the protection that a copyright work receives in the country where it was first published, there are several international copyright agreements that provide protection for works internationally. For further details of these agreements such as the Berne Convention, the UK's IPO provides a useful overview (IPO, 2014).

Content produced by UK civil servants, ministers and government departments (including legislation and government reports) is known as Crown Copyright material. Most copying and publication of Crown Copyright material was previously allowed under a waiver, but is now explicitly permitted under the terms of the Open Government Licence (National Archives, 2015). This now permits unrestricted copying of the material following amendment of the Public Sector Information Directive in 2013. The Open Government Licence is discussed in Chapter 4 (pages 132–3); in essence, provided you acknowledge the source and do not reproduce government logos or insignias, you are free to copy, adapt and exploit UK government information.

The Hargreaves Review

Before we consider copyright exceptions and licences it is worth considering the recent changes to the law in the UK to provide some context. Although the UK Copyright Act has been modified many times since 1988, significant amendments relating to education were finally made to the CDPA in June and October 2014. This followed the review of intellectual property by Professor Ian Hargreaves, which came after several failed attempts in the preceding decades to redress the balance in the copyright regime and modernize it for the digital age (Hargreaves, 2011). For example, in December 2005 HM Treasury launched a widespread review of UK intellectual property laws, known as the Gowers Review. The recommendations made by the Gowers Report (HM Treasury, 2006) were widely criticized as not going far enough to recognize the pace of technological change and they were never implemented in UK law. Consequently in November 2010 the Prime Minister announced another review of intellectual property laws to make them fit for the digital age and to ensure they supported innovation in the interests of economic growth. This time the recommendations from the review led to amendments to the law following several rounds of consultations with stakeholders. This included the education community and representatives of rights holders and other commercial and non-commercial organizations.

Professor Hargreaves made ten recommendations and the government responded to the Hargreaves Review in August 2011. In 2013 the first changes were enacted via the Enterprise and Regulatory Reform Act, which made provision for the handling of orphan works – works where it is not possible to identify or contact the author. Meanwhile the Copyright Hub⁵ was launched in July 2013 (see Chapter 5, page 203, for more details) and the new exceptions finally came into force on 1 October 2014.

The issue of ‘orphan works’ has caused many problems in education and cultural institutions. Orphan works consume a considerable amount of staff time in attempts to track down rights holders to obtain permission to copy the materials. On occasions where the rights cannot be traced, an institution needs to assess the risks involved in copying the material without permission for each individual case. Institutions also need to maintain records to demonstrate that all possible avenues were explored. The launch of the Orphan Works Licensing Scheme by the IPO in October 2014 gave institutions one route to using orphan works in a risk free way.

However, there is also now an orphan works exception following a European directive that allows use of certain orphan works by educational and cultural institutions. For more information see Chapter 2, pages 81–2.

One of the most significant aspects of the 2014 copyright reforms in the UK was the provision that certain exceptions could not be undermined by the terms of a contract between rights holder and end user. This was particularly important to the education sector in relation to the licensing of electronic resources, where the terms of a licence are often more restrictive than the provisions of the law. For example, the law allows people to make a single copy of an article for their own non-commercial research or private study but an electronic resource licence may prohibit this. The effect of the changes to the law in October 2014 was that any term of a contract or licence that attempted to undermine an exception provided for by law in the UK could be ignored. However it is still early days to ascertain what this actually means in practice. For many academic librarians working under the provisions of a range of licence agreements there is a level of anxiety about whether they can ignore a legal contract they or their employers have agreed to. The issue has also been further complicated where commercial publishers use some form of digital rights management (DRM) technology to prevent copying or exploitation of the work under an exception (see Chapter 4, pages 125–7, for more information). In early 2016 these matters were subject to ongoing discussions between the IPO and the Libraries and Archives Copyright Alliance (LACA).

'Fair dealing'

If you wish to use a copyright work for educational purposes in the UK you could do this under a direct licence, where permission is obtained directly from the rights holder, or a collective licence from a reprographic rights organization such as the CLA. Alternatively you could choose to rely on a copyright exception if licences are unavailable or inappropriate, although this will require consideration of the CDPA to ensure that the proposed activity is permitted by law. Licences are effectively a risk free approach to copying, because you have permission, meanwhile copyright exceptions rely on an element of judgement. UK law (like many other copyright laws throughout the world) has a provision known as 'fair dealing', and most educational copying done under an exception to

copyright law is subject to this provision. It requires a judgement to be made over how a 'fair-minded and honest person would deal with the work' and case law is relevant here in determining what might be 'fair'. Fair dealing is in fact a defence that could be used in court rather than a right under law. This is particularly important because it puts the onus on the person using the defence to make sure it actually applies. Since 2014 fair dealing can be applied to all types of copyright works (including films, sound recordings or broadcasts) and permits the making of limited copies for the following specific purposes:

- ◆ non-commercial research and private study
- ◆ quotation, criticism and review
- ◆ the reporting of news
- ◆ government administration
- ◆ illustration for instruction
- ◆ caricature, parody, or pastiche.

In all cases, where feasible you must provide a sufficient acknowledgement. Much photocopying and scanning of published works undertaken in an educational context falls under the fair dealing provisions; for example, single copies made by teachers for their research or by students as part of their private study. However, distribution of copies via the VLE or similar network constitutes multiple copying and thus is unlikely to be considered as fair dealing. Having said that, fair dealing defences do cover some activities beyond single, personal copies as the next section on specific educational exceptions in the UK explains.

Educational copying and UK law

Anyone wanting to make copyright material legally available in educational establishments in the UK has to do so under either a licence or an exception to copyright. In order to stay within the law and make the best use of your resources you need to understand the relationship between the two.

Licences can be for specific works or collections of content, or they may be 'blanket' licences that cover whole classes of work (e.g. musical works or published editions). The most commonly encountered licensing bodies







providing blanket permissions to UK educational establishments are summarized in Table 1.2.

Table 1.2 <i>Licensing bodies providing blanket permissions to UK educational establishments</i>		
Licensing body	Class of work	What is allowed
The CLA (Copyright Licensing Agency; www.cla.co.uk/)	Books, magazines	Limited copying and use in a VLE such as Moodle
The ERA (Educational Recording Agency; www.era.org.uk/)	UK TV broadcasts	Recording and storage allows use of Box of Broadcasts (BoB) service http://bobnational.net/
NLA Media Access (Newspaper Licensing Agency; www.nlamediaaccess.com/)	Newspapers, magazines	Press clippings (including digital content)
The DACS (Design and Artists Copyright Society; www.dacs.org.uk/)	Artistic images (including photos)	Reproduction of artistic works
PRS for Music (www.prsformusic.com/), formerly two separate organizations: the Performing Right Society and the Mechanical Copyright Protection Society	Musical works and sound recordings	Public performance, audio products, online services; performance, communication and reproduction of musical works on behalf of songwriters and composers
PPL (Phonographic Performance Limited; www.ppluk.com/)	Musical sound recordings	Public performance of musical sound recordings on behalf of the copyright holders (record companies, producers and performers)
Filmbank (www.filmbank.co.uk/)	Feature films	Showing film and TV in non-educational context


In addition to dealing with the licensing bodies listed in Table 1.2, institutions can purchase licences for specific electronic library resources, teaching objects and software packages directly from suppliers or via aggregators like Jisc Collections and Eduserv (for more details on born digital resources see Chapter 4).

In the UK, Sections 29 to 36 of the CDPA include specific exceptions that relate to education where it is not possible or appropriate to get a licence.

Table 1.3 sets these out in more detail (although as this is a summary you should refer to the original wording of the legislation when assessing a copyright issue).

Table 1.3 <i>Exceptions in the CDPA relating to education</i>		
Copyright exception	Brief description	Limitation and caveats
Section 29: Research and private study 	Allows individuals to make single copies of limited extracts of copyright works for non-commercial research or private study. No contractual override.	Subject to fair dealing. Cannot be used for sharing material on a VLE. Individuals must make their own copies. Cannot be used to circulate copies to students.
Section 30: Quotation (criticism and review) 	Allows 'fair dealing' usage of quotations for any purposes including 'criticism and review'. No contractual override.	Subject to fair dealing. Works must have been made publicly available (this does not cover unpublished material).
Section 31A & 31B: Accessible copies for disabled users 	Allows copying to provide equal access to copyright works for users with any type of physical or mental disability, as individuals (s.31A) or institutions (s. 31B). No contractual override.	Covers all types of copyright work. No contractual override. Does not address use of DRM technologies or technical protection measures.
Section 32: Illustration for instruction 	Allows limited, non-commercial 'fair dealing' use of copyright material for the purposes of teaching. No contractual override.	Subject to fair dealing. Covers all copyright works including sound recordings, films and broadcasts.
Section 34: Performing or playing a work for educational purposes 	Performing, playing or showing work in course of activities of educational establishment.	Members of the public cannot be admitted. Does not permit copying of the work.
Section 35: Recording of broadcasts 	Allows recording of free-to-air broadcasts by or on behalf of educational establishments for non-commercial purposes. Only applies where no licensing scheme (ERA) available.	ERA licensing scheme takes precedence. Non-commercial educational use. Allows off premises access only via secure electronic network.

Continued on next page

Copyright exception	Brief description	Limitation and caveats
Section 36: Educational copying of published works 	Allows copying and use of multiple copies of extracts from published copyright works. Only applies where no licensing scheme (i.e. CLA) available.	Cannot exceed more than 5% of a work in a year per institution. CLA licensing scheme takes precedence if the work is in CLA's licensed repertoire. Includes incorporated works (e.g. illustrations).

Although the CDPA makes a provision for educational copying, relying on the exceptions to the law involves a degree of risk. The CDPA does not specify which technologies can be used to make copies, so digital copying is permitted. However, the distribution of copies of a work via a network was clarified to be an exclusive right of the right holders in 2003 when the UK law was amended by the Copyright and Related Rights Regulations (Statutory Instrument No. 2498). This amendment:

- ◆ redefined broadcasts to specifically exclude internet transmission (or podcasts)
- ◆ gave copyright holders the exclusive right to 'communicate a work to the public'
- ◆ defined this right as making the material available by 'electronic transmission' – via the internet and/or broadcasting the work.

Before this amendment it was technically illegal to view websites, as doing so created temporary copies on the viewer's computer, but the amendment stated that copyright is not infringed by:

the making of a temporary copy which is transient or incidental, which is an integral and essential part of a technological process and the sole purpose of which is to enable:

- (a) a transmission of the work in a network between third parties by an intermediary; or
- (b) a lawful use of the work.

Chapters 2–5 of this book consider in greater depth the ways in which licences and exceptions apply to certain types of content and context in the UK, although it is worth discussing the broader implications of the recently updated legislative environment. One of the objectives of the recent UK copyright reforms was to legitimize existing educational practice and provide the flexibility to avoid copyright being a barrier to the use of new tools and practices in learning and teaching. Section 32 of the CDPA – ‘illustration for instruction’ – is one of the most important additions to the law because until 2014 there was no provision for the reproduction of copyright material in teaching ‘by means of a reprographic process’. This meant that using copyright content in PowerPoint slides and electronic whiteboards for teaching without permission was illegal and there was no provision for the copying of sound recordings or film. Effectively this left traditional ‘chalk and talk’ reproductions of existing works as the only practical, legal option, although it was widely recognized that use of technology to present copyright content to students in a classroom was widespread and caused little harm to copyright holders. This section of the CDPA also updated the provisions for use of copyright content for the purposes of answering or preparing an examination question – an exception that has also been widely used by those creating dissertations or theses. The amendment in 2014 actually narrowed the scope of this exception by removing the condition that ‘anything done for the purposes of an examination’ was permissible and instead applied a fair dealing test. However, it is likely that for the most part the activities undertaken under the previous, more wide-ranging exception are still valid under the newly worded legislation. As before, the exception only relates to the preparation or answering of the exam question, so subsequent use of the material such as posting a thesis containing third-party copyright material is not covered under this exception, although it may be under Section 30 – criticism and review, quotation and news reporting. See Chapter 4, pages 158–9, for more information on the online submission of theses.

The practice of quoting from other works is fundamental to the process of learning, but up until 2014 there was no exception that specifically mentioned the term ‘quotation’. Instead Section 30 of the CDPA allowed limited portions of works to be reproduced for the purposes of criticism and review (and for news reporting), so the use of the work had to relate to a critical evaluation of the work or a related concept (such as the values

and thoughts embodied in it). Following the Hargreaves Review, the law was amended to say that people could quote a reasonable proportion of a copyright work for any purpose as long as it had already been published and the use passed the fair dealing test (not any more than was needed, not affecting sales or exploitation and with attribution where practical). For the vast majority of students, quotations of short passages of text would already have been allowed under the standing concept of criticism and review. However, the exception now covers other potential uses in an e-learning environment, such as including material in exam tests, or teaching materials (although as mentioned earlier there is likely to be some overlap with Section 32, 'illustration for instruction', where both exceptions might apply). As the introduction of the concept of quotation is so new and there has been little UK case law, it is by no means clear what is and is not acceptable. Of particular relevance to those looking to make teaching materials available is whether an image (protected as an artistic work) could be said to be 'quoted' if it was reproduced in its entirety. EU case law suggests that in some cases reproduction of a photograph could be a quotation. This is discussed in more depth in Chapter 3, pages 91–2.

Section 34 allows copyright works such as films, TV programmes and music to be shown or performed in educational establishments as part of their educational activities. Therefore showing or performing a copyright work at an educational institution would not be covered by this exception unless it was done for the purposes of teaching or assessment.

Section 35 allows educational establishments to record broadcasts for the purposes of teaching and learning as long as there are no licences available for this activity. Although this exception can be used for subscription TV and radio, the recording of free-to-air broadcasts in the UK is licensed by the ERA. The ERA licences and the ways of getting access to broadcast content in education are mentioned in more detail in Chapter 3.

Section 36 allows educational establishments to make multiple copies of limited extracts from copyright works (with the exception of broadcasts or images that are not incorporated into other works) in order to support teaching. The limits before the 2014 copyright reforms were so low (1% of a work per quarter) that they were rarely, if ever, used. The updated limits now cover up to 5% of a work per institution per year, but as before do not apply if there are licences available to cover the copying. In the UK the CLA and Newspaper Licensing Agency (NLA) licences cover books,

journals and newspapers, respectively, so the exception does not relate to anything within those organizations' repertoire where a licence is available. Educational institutions wanting to take advantage of Section 36 need to consider that although the percentage limit of an extract is similar to that of the CLA Licence, the conditions of the exception are different from the available licences. One major difference is that the 5% limit on a particular copyright work applies to the whole institution, so two or more teachers must not copy from the same work even if they are copying different extracts for different groups of students. In any event, it is important for institutions to incorporate an understanding of Section 36 alongside the application of the CLA Licence within their standard processes and procedures. The history and practical applications of the CLA Licence are discussed in more detail in Chapter 2.

Before 2014, copies for students with a visual impairment could be made under the Copyright (Visually Impaired Persons) Act 2002. This allowed single copies of copyright works (literary, dramatic, musical or artistic work or a published edition) to be made for visually impaired persons for accessibility purposes if they were not available commercially. The act has now been repealed following the Hargreaves recommendations that this should form a new exception and be extended to persons with all types of disabilities, not just visual. Section 31 of the CDPA now allows copying to provide equal access to copyright works for users with any type of physical or mental disability, either as individuals (s. 31A) or institutions (s. 31B). Copying for students with disabilities is also explicitly covered by the CLA Licence and the copying does not need to be reported, unlike other scanned items.

Case Study 1 The copyright officer at Brunel University London

Monique Ritchie

Introduction

In 2004–5, Brunel University Library created a new dedicated post to manage copyright in the academic environment, with a focus on digital copyright: the copyright and digital resources officer. Like most educational institutions, recent

changes to copyright law and licensing schemes, and the increased use of e-learning environments and e-resources, threw copyright to the forefront of strategic planning. There was a strong recognition among library and senior university management that the digital age posed particular challenges at a time when the University's e-learning strategy was evolving rapidly. It became increasingly apparent that a university-wide copyright consultancy service was required to manage licence administration and copyright advice faced with an increasingly intricate licensing and legislative framework.

In 2012–13, the copyright officer assumed additional research support responsibilities in response to changes affecting academic research around open access and research data management and the post became a dual one: research librarian and copyright officer.

Remit, scope and position in the institution

The remit is broad, with the copyright officer responsible for providing support on copyright and IPR issues to all staff and students, academic and non-academic. However, the post sits within the library staff structure as, despite the close links with external departments and colleges and institutes, key stakeholders are primarily engaged in teaching, learning and research functions. The library naturally occupies a central position in relation to these, and is quite often the first port of call for questions – library or non-library related.

Initially, the Director of Library Services directly oversaw the direction and focus of the role as it had linkages with the University's strategic planning process. Once established, and following internal restructuring in 2008–9 to address changing university priorities, management devolved to the Academic Services team, working alongside subject liaison librarians and the institutional repository team. Further internal and institutional restructuring found copyright, digital readings and the institutional repository moving to Content Services, responsible for electronic resources, library systems and e-strategy in 2013–14, with the role based in a newly created Research Support Services sub-team. The copyright officer works closely with the Collection Services team responsible for interlibrary loans, reading list processing and acquisitions.

While copyright is no longer based in the same team as the subject liaison librarians who provide comprehensive support to the University's learning, teaching and research aims and objectives, the copyright officer continues to benefit from their close links with academic staff, and they also assume some

copyright support responsibilities.

Within the institution, there are links with the Legal, Governance and Information Office, Computing and Media Services and the Learning Technology Team, and directly with academic staff within colleges and research institutes. The role therefore involves working with a wide variety of colleagues at many levels.

Role and responsibilities

The copyright officer deals primarily with the following areas:

- ◆ copyright licence administration
- ◆ creating and implementing copyright policy and procedures
- ◆ copyright compliance monitoring
- ◆ copyright clearance
- ◆ copyright consultancy (guidance on copyright and IPR issues, with a focus on digital copyright)
- ◆ designing and delivering staff development and user education on copyright and IPR in a teaching, learning and research environment.

The copyright officer is responsible for ensuring that the University meets the requirements of copyright law by administering licences and providing advice and training. The role directly supports the University's teaching and learning strategy, playing a significant role in making digital resources of all kinds available to staff and students, developing services and helping to ensure that initiatives in this area are seamlessly integrated from a user's perspective. The Digital Readings Service, which delivers digital readings licensed by CLA to the VLE, is one such initiative.

Core parts of the role of the copyright officer are ensuring that staff and students are aware of the terms of the licences, developing support materials and disseminating information in the form of web pages, staff development sessions, handbooks and newsletters. Copyright clearance is perhaps the smallest part of the role, possibly because Brunel encourages and provides support to staff to obtain their own, and before the post was created, many staff and departments were accustomed to doing this themselves. External liaison with similar post holders at other institutions is encouraged.

Although it may appear that the research and copyright elements of the Brunel role are unconnected, in fact they are symbiotically linked. First, there

are significant copyright and intellectual property issues affecting all aspects of the research lifecycle, from conceptualization of a research project or idea to the publication and curation of research outputs and beyond. This dual role provides a unique opportunity to link support and target a community which is typically more difficult to target than the education community.

Second, the highly individualized and 'siloe'd' nature of research makes providing services and training to the research community challenging compared with the teaching or administrative communities, where centralized support is more embedded. Research support has proved to be a way in, as researchers seek advice on demand based on their individual schedules and needs, such as when applying for funding or publishing.

Problems, issues, challenges

The key areas of difficulty relate mainly to the CLA Licence and the legislative framework. Licensing terms and conditions are complex, requiring interpretation or condensing into manageable bite-sized formats for staff. Administratively, the CLA Licence requires separate processes from other content and its reporting and collection maintenance requirements are onerous, although there have been recent improvements and a commitment to working closely with the sector to improve licensing conditions.

Changes to copyright law in 2014 have further complicated copyright support, as some aspects of copyright practice and interpretation have now become less clear, particularly around fair dealing statutory exceptions for examinations and instruction. The use of certain content types, like images and broadcasts, is still fraught with difficulty. Some positive changes in the legislation, such as the exception allowing 5% of unlicensed works to be used for teaching in a 12-month period, are not being used because of the impracticability of managing processes institutionally and workload implications.

When the VLE was upgraded to a new version in 2007, which required training for most staff, 50 sessions were delivered to staff during that year. Sustaining a copyright training programme of this intensity is not feasible and so training is provided to e-learning support staff who cascade support to academics with back-up from the copyright officer. In 2015–16, centralized training is to be delivered through a central academic practice programme coordinated by the Brunel Educational Excellence Centre.

Brunel has found that academic staff, who are the primary users of the CLA Licence in their teaching, and to a lesser extent in their research, simply do not have the time to absorb the complexities of the licence and work out how to apply them to their needs or attend training sessions. Many staff are balancing heavy teaching, research and administrative workloads and the reality for most is that planning course content and relevant readings is often done under pressure. It is not uncommon for reading lists to be put together ad hoc, even a week before they are needed. In fact, from an academic's viewpoint, it is arguably the best method to guarantee the currency and relevance of readings, although from a library perspective this is the worst possible way, as the acquisitions process takes time, particularly when many lists come in at once.

Brunel tackles copyright compliance holistically, by focusing on embedding good practice into processes, rather than on the rules and regulations, and by simplifying administration for staff. A key example of this is the introduction of a simple requirement for staff to prepare and submit reading lists to the library for resourcing. Library staff then resource the content, consulting academics when there is a conflict or clearance is needed. Staff no longer need worry about what is legal, they can simply prepare lists based on the most appropriate content for their teaching needs and library staff advise accordingly. However, this approach is demanding and resource intensive for the library.

Technological advancements in teaching methods and evolving 'reading lists' that are less text based and feature multimedia and other content types (e.g. YouTube) more frequently increase demands on copyright support.

Conclusion

Compliance with multiple terms and conditions in complex licences is resource intensive and the workload it generates increases exponentially each year with increasing use of e-learning environments and other emerging technologies where the rules are different.

Overall, it is a very challenging task to ensure that the institution complies with copyright legislation and terms of blanket and contractual licensing. These licences are not yet flexible enough to allow academics to make use of the best resources available, without getting bogged down in working out what is legal or not. At Brunel the view is that copyright, even with recent changes to legislation in 2014, can at times hamper the ability to teach and conduct research effectively in the increasingly competitive international higher

education environment, which has an impact on the creative output of students and researchers and ultimately on the economy.

Ireland

Irish copyright laws are broadly similar to those in the UK, although Ireland's Copyright and Related Rights Act dates from 2000 rather than 1988. As with the UK, Irish copyright laws have been amended in recent years following European directives. Educational institutions are required to take out a licence to cover multiple copying of copyright works from the Irish Copyright Licensing Agency (ICLA; www.icla.ie). Licences are available for schools and for HEIs. The licences cover photocopying, scanning and digital distribution of Irish works for secondary schools and HEIs. The ICLA also has reciprocal agreements in place for scanning of titles from the UK, Australia, Canada (including Quebec), New Zealand and South Africa. It has a list of participating US publishers and the licence also covers newspapers from Ireland and the UK. The licence specifies that institutions can make 'digital copies' (defined as scanning unaltered from the original) of copyright works that:

- ◆ are already owned by the institution
- ◆ do not exceed the limits of the paper licence (5% or chapter of a book, one article from a journal, a short story or poem not exceeding ten pages from an anthology)
- ◆ do not include printed music, newspapers, maps, charts, books of tables, artistic works (other than those essential to illustrate a text), in-house journals or 'privately prepared teaching materials'.

The licence also specifies that:

- ◆ no changing or editing of the material is permitted
- ◆ digital copies should not be posted on the web or sent by e-mail or linked to such that it can be accessed by unauthorized parties
- ◆ no copying to storage devices of the digital materials is permitted
- ◆ gathering of the copies is only permissible for back-up purposes and not for construction of a repository or database of resources.

Scanning under the licence causes some concerns in Irish institutions that are not able to restrict users from copying the files to a storage device – such as a USB stick or their own computer. Irish copyright laws were amended some time before those in the UK so that licences and contracts for digital publications (such as electronic journals or databases) cannot override the exceptions to copyright provided by statute. However, Kretschmer et al. (2010, 101) pointed out that no case law exists in Ireland and no empirical studies have been carried out to establish the impact this provision has on the Irish copyright industry.

Australia

In Australia the Copyright Act 1968 remains in force although significant changes were made to the law in 2000, which impacted on the copying that could be undertaken for educational purposes. Since the Copyright Amendment (Digital Agenda) Act 2000 came into force in 2001 it has been possible to scan copyright works for educational purposes under a licence from the reprographic rights organization, Copyright Agency Limited (CAL; www.copyright.com.au). The CAL website provides guidance for those in education and the education licences are blanket licences similar to those issued by the CLA in the UK since 2005. The licence covers photocopying, scanning and digital copying of text or images and allows any form of ‘reproduction’ or ‘communication’. This includes adding to or changing the content, or presenting it in a different context. There are many similarities between the UK and Australian licences, which largely reflect the similarities of the legislative environment.

However, the CAL licences are more permissive than the CLA Licence in the UK, permitting 10% of a literary or musical work to be copied or one article from a journal issue. Artistic works can be copied in their entirety and copying from both published and unpublished works is permitted. Copies can only be distributed to registered students on a course and the material must also contain a copyright statement. Australian CAL licences also differ from the UK’s CLA licences in the obligation to report data. Whereas UK universities have agreed to full data reporting on all items they scan under licence since 2005, data reporting is not a requirement of the Australian licence and compliance is monitored largely through periodic surveys. Further information and answers to frequently asked

questions about the CAL licences are available from the agency's website (CAL, 2015).

Screenrights (www.screenrights.org) manages a licence that allows educational institutions to copy and share broadcast content, such as documentaries shown on television. There are also arrangements in place for music licensing of educational establishments.

New Zealand

Although the New Zealand Copyright Act 1994 allows schools, public tertiary (higher education) institutions and non-profit private training establishments to copy material from published works for educational purposes, the amounts permitted are limited. Therefore New Zealand has a similar licensing scheme to those in the UK and Australia. This permits copying beyond these limits and is issued by Copyright Licensing New Zealand (CLNZ; www.copyright.co.nz), which is the reprographic rights organization in New Zealand and offers licences for education and other sectors. Scanning under the CLNZ licence and copyright issues are discussed in Case Study 5 about the University of Auckland, presented in Chapter 4. The licence is similar to the Australian CAL licence in that the limits are 10% or one chapter of a work. However, the New Zealand CLNZ licence only covers copying from print originals. Pages copied from websites or electronic retrieval systems can be stored in the learning management system (VLE) under the Copyright Act 1994, providing certain conditions are met. Until recently each licensee provided sample data for all content copied under the licence during the period of one year, once in the five year term of the licence. New Zealand universities are currently piloting a different system, whereby each university has agreed to install e-reporting software that will automate the survey process and report more frequently with more accurate data. This will be reviewed at the end of 2016. In 2013 CLNZ referred a new licence and a significant increase in the licence fee for New Zealand universities to the New Zealand Copyright Tribunal. The reference followed a breakdown in negotiations after the universities refused to agree to the increased licence fee. The universities considered the proposed increase, from \$6 to \$20 per year per student, to be unreasonable given that journals and books were increasingly available in digital format. Further sources of advice about

New Zealand copyright law are included in the section 'Further resources'; the Copyright Council of New Zealand and the Library and Information Association of New Zealand Aotearoa provide useful information.

Canada

Canadian copyright laws are based on UK law, and therefore include common principles such as fair dealing and similar exceptions to copyright for educational purposes. Since 2007 the Canadian Government has been attempting to review its copyright laws, which has led to considerable public concern about copyright issues. Known as C-61 and C-32, the reforms have been criticized by many including Michael Geist, a University of Ottawa law professor, who led a movement that gained enormous popularity through a Facebook group. For example, amendments to Canadian law to outlaw the circumvention of digital rights management systems have been met with much opposition. Campaigners argue that circumvention for non-infringing purposes, such as fair dealing or uses permitted by educational and library exceptions in the Copyright Act, must be allowed.

In order to address these questions the Canadian Government convened the Gatineau Copyright Roundtable in July 2009. It was attended by copyright experts and representatives from bodies such as the Association of Universities and Colleges of Canada (AUCC) – now known as Universities Canada (www.univcan.ca/). In 2009 the AUCC recognized that copyright reforms were needed to support e-learning, and believed that educational uses of materials freely posted on the internet should be permitted. They therefore advocated that copyright laws should be amended to facilitate technology-enhanced learning and not to disadvantage online learners. In 2012, Bill C-11, otherwise known as the Copyright Modernization Act, was adopted, resulting in significant amendments to the Copyright Act. These included expanded exceptions for educational institutions and libraries, archives and museums, and reduced statutory damages for non-commercial infringement.

In 2012 Canadian universities had a similar dispute to that in New Zealand over copyright licensing with their reprographic rights organization, Access Copyright (which covers all of Canada, with the exception of Quebec), over the price of the annual licence. Access

Copyright had claimed that universities were unable to opt out of their licence, but a Supreme Court of Canada decision – in *Alberta (Education) vs. Access Copyright* – found that some copying for educational purposes did fall firmly under fair dealing. This decision, in combination with expansion to fair dealing in Bill C-11, led Canadian universities to question the value of the licence. Many Canadian universities have subsequently opted out of the licence, and rely on the fair dealing guidelines adopted by Universities Canada. These guidelines (Universities Canada, 2015) outline the amounts of copyright material that may be reproduced for educational purposes and under which circumstances, without payment of fees or obtaining permissions. However, some legal experts caution that the amounts referred to in the policy have no firm basis in law. Access Copyright is currently suing one Canadian university, while another university is embroiled in a lawsuit with the Quebec rights collective Copibec.

Access Copyright now offers a wide variety of licence options, to cover photocopies, e-mail attachments and the distribution of digital readings. There are several resources on Canadian copyright law listed in the section 'Further resources'. The Canadian Library Association maintains a Copyright Information Centre on its website and Michael Geist's blog (www.michaelgeist.ca) is another good source of up-to-date information.

The USA

Copyright legislation

In the USA the current legislation dates from 1974, but several other acts have been issued that those working in education need to be aware of. Copying for education under the Copyright Act 1974 is certainly less restrictive than in other countries in the world. The concept of 'fair use' is enshrined in the law, and differs substantially from the UK concept of 'fair dealing'. Specifically 'fair use' is a broad legal doctrine, which covers copying of copyright material for educational and other societally beneficial purposes. In the late 1990s many US librarians were involved in the Conference on Fair Use (CONFU) to set out guidelines of what could be copied under this provision. This coincided with many university libraries establishing electronic reserves services. Electronic reserves are either scanned or digital copies of copyright works made available to

students via the library. The term 'reserves' is taken from the US word used commonly for short loan collections. Traditional paper 'reserves' were either books or copies of articles kept in the library for reference only access to allow large numbers of students to access them. Electronic reserves services were originally developed in parallel with online learning, and required students to access the material in the library via dedicated terminals. However, increasingly these services are now integrated so readings are delivered via the VLE. Some US universities rely on the fair use provision to deliver copyright material to students, and only seek copyright permission for material that is repeatedly used in a course of study. Others are more risk averse and routinely seek permission to digitize material for electronic reserves either directly with publishers or through the US reprographic rights organization, the Copyright Clearance Center (CCC). The CCC offers a blanket licence to institutions that wish to cover the copying they undertake. Unlike in the UK, most US government materials are not covered by copyright and unrestricted copying is permitted (see Chapter 1, page 16).

Other relevant US legislation

The Digital Millennium Copyright Act (DMCA) came into force in 1998 and specifically prohibits the circumvention of any 'technological protection measure' that a copyright owner might put in place, so the use of the digital material by students or teachers may be restricted if a publisher had used some form of digital rights management technology. The DCMA also added a provision known as 'safe harbor' which limits the legal liability of internet service providers from copyright infringements carried out by users of their service. This safe harbor provision has been instrumental in allowing the growth of internet services containing large volumes of third party copyright material. Meanwhile legislation dating from 2002 has also impacted on the delivery of copyright works in the USA, specifically with relation to distance learners. TEACHAct (covering technology, education and copyright harmonization) allows copyright works to be delivered to distance learners without permission from the rights holder and without the payment of fees. It covers the digitization of analogue works to produce digital materials if a digital version is not available for purchase.

Some of the specific requirements of this act are: only not-for-profit educational institutions are covered; the educational institution must have an institutional copyright policy; the educational institution must provide copyright information to faculty, other staff and students; the material must have a notice to inform students of the copyright policy; and the material can only be distributed to enrolled students.

The TEACHAct formalized what had been a grey area in US legislation. It allowed US institutions to make digital copies of published content available to students via a secure network (ALA, 2015). However, the act has not been without controversy and in 2008 several large publishing houses embarked on legal action against universities that they believed to be in breach of copyright. Both the University of California and Georgia State University have been pursued in court by publishers who believed their copyright had been infringed over the interpretation of fair use in regard to electronic copies for educational use. In the instance of Georgia State cases were first filed in 2008 and it was not until 2015 that the case was finally dropped. Case Study 3 in Chapter 2 examines the practice of one US university which takes a less risk-averse approach to copyright issues.

Copyright and scholarly communication

While technology moves at a fast pace and constantly offers teachers new ways of delivering different types of resources to students across a network, copyright law is often perceived as being slow to change and out of step with what is technically possible. Arguably copying material for educational purposes has also been an area of unspoken tension between publishers and academics. Many academic authors are themselves rights holders and as content creators they wish to see their work protected and derive a modest income from their publications. However, reproducing, copying, modifying and amending the work of others has always been a fundamental part of scholarship. Very little research is undertaken without building on the findings of previous studies and conventions such as quotation, citation and referencing were developed to recognize and acknowledge the works of others. So it is inevitable that teachers use others' ideas in the classroom, particularly in the arts, humanities and social sciences, where debate, opinion and argument are an essential part of the learning process. Yet technology has led many in the publishing, film

and music industries to try to tighten copyright laws in conjunction with the application of technical protection measures (or digital locks).

This tension between the ease with which people can now share knowledge and creativity, and the concerns of those who have prospered under the more regulated and controlled information environment of the pre-internet age, has created an ideological battleground and copyright is at its heart. While rights holders talk of piracy and the risk this puts to jobs in the creative sector, advocates of the potential for humanity to share knowledge and creative outputs talk about freedom. The most famous and tragic example of these two viewpoints clashing involved the programmer and activist Aaron Swartz, who was a key figure in the creation of the Creative Commons licences (see below). He also helped to defeat the US Stop Online Piracy Act (SOPA) legislation in 2012, which was intended to control piracy on the internet. Swartz was caught systematically downloading JSTOR (see Chapter 4) articles on the campus of the Massachusetts Institute of Technology (MIT) in the USA in 2011. The subsequent prosecution through the US criminal justice system led Swartz to take his own life in 2013. Although this is an extreme example it demonstrates the level of investment that many people have in continuing this ideological battle. The rise of Sci-Hub, an illicit scholarly publishing file sharing service, is the latest incarnation of this battle in the education and research sector – see Chapter 5 for more detail. In the face of ever-tighter copyright restrictions some academics and IPR experts have launched initiatives to attempt to redress the imbalance that they believe now exists. A few of these initiatives are worthy of mention and discussed briefly next.

Creative Commons

The Creative Commons movement was founded in 2001 by Lawrence Lessig and a group of cyber law and IPR experts. Lessig is Professor of Law at Stanford Law School and founder of the school's Center for Internet and Society. The movement, sometimes called an alternative to copyright, is founded on the belief that modern copyright laws have become overly restrictive and are stifling creativity: 'A single goal unites Creative Commons' current and future projects: to build a layer of reasonable, flexible copyright in the face of increasingly restrictive default rules' (Creative Commons, 2009).

Creative Commons licences offer creators various choices, including to apply limited restrictions, an approach called ‘some rights reserved’. This allows content creators to attach licences to their work to indicate that they are happy for it to be used in certain circumstances. Awareness of Creative Commons has grown considerably since the decision was taken to use these licences on Wikipedia in 2009. It is also now possible to search Google for content licensed under Creative Commons and the popular photo-sharing website Flickr uses Creative Commons licences as a key feature of its service. There are six types of Creative Commons licence, comprising four licence components: Attribution (BY), Non-Commercial (NC), No Derivatives (ND) and ShareAlike (SA). A summary of the six licences and their constituent components is given in Table 1.4.

As a content creator, a teacher can attach a Creative Commons licence to their work to indicate that they are happy to share it under certain







Licence type	Abbreviation	Description
Attribution 	CC-BY	Lets others distribute, remix, tweak and build on creators’ work, even commercially, as long as they credit them for the original creation. This is the most accommodating of licences offered. Recommended for maximum dissemination and use of licensed materials.
Attribution – ShareAlike 	CC-BY-SA	Lets others remix, tweak and build on creators’ work even for commercial purposes, as long as they credit them and license their new creations under the identical terms. This licence is aligned with the ‘copyleft’ free and open-source software licences, which ensure that derivative works can never be put under more restrictive licensing terms than the original. All new works based on the original work carry the same licence, so any derivatives will also allow commercial use. This is the licence used by Wikipedia, and is recommended for work that incorporates content from Wikipedia and similarly licensed projects.

Table 1.4 *Continued*

Licence type	Abbreviation	Description
Attribution – Non-Commercial 	CC-BY-NC	Lets others remix, tweak and build on the creators' work for non-commercial purposes, and although new works must also acknowledge the creator and be non-commercial, creators do not have to license their derivative works on the same terms.
Attribution – No Derivatives 	CC-BY-ND	Allows for redistribution, commercial and non-commercial, as long as it is passed along unchanged and in whole, with credit to the creator.
Attribution – Non-Commercial – ShareAlike 	CC-BY-NC-SA	Lets others remix, tweak and build on the creators' work for non-commercial purposes, as long as they credit the creator and license their new creations under identical terms.
Attribution – Non-Commercial – NoDerivatives 	CC-BY-NC-ND	The most restrictive of the six licences, only allowing others to download the creators' works and share them with others as long as they credit the creator, but they cannot change them in any way or use them commercially.

conditions. Teachers can also use the Creative Commons Search to identify material that they can use in their teaching. The most recent version of the licences, The Creative Commons 4.0 Licence, is an international licence designed to be used in any territory around the world. You can find out more about the licences from: <http://creativecommons.org/>.

The Open Movement

The open movement originated from the development of open-source software and this section discusses how this movement relates to technology and copyright issues. Open-source software as defined by the Open Source Initiative (2009) needs to meet ten criteria, including free distribution, providing access to the source code and having a free licence to distribute the software. It is an alternative to commercial, proprietary (controlled by a sole proprietor) software and was largely the inspiration for the Creative Commons licences and the open access movement. In the

UK in 2014 over 60% of institutions used open-source solutions for online learning and the open-source VLE Moodle is widely used in higher and further education. A growing number of other open-source learning tools are also available such as e-portfolio software, social networking tools such as wikis and blogging platforms, and content management systems. The use of open-source software gives institutions greater control over the software that they use and the licensing fees that they are charged, but this has to be weighed up against the costs of employing technical staff to set up and maintain the software.

While open-source software might have been seen by some as a niche area for the technically or legally minded, two subsequent open movements have done much to raise awareness about copyright issues in education: open access and the open educational resources movement. Peter Suber, one of the leading voices in the open access movement, provides a useful definition: 'Open access (OA) literature is digital, online, free of charge, and free of most copyright and licensing restrictions' (Suber, 2015). Suber provides a valuable overview of the open access movement, which is largely beyond the scope of this book. However, the establishment of open access repositories to capture the research output of universities has done much to highlight the importance of understanding copyright issues. Many higher education funding bodies around the world are now mandating authors to deposit publicly funded research outputs into an open access repository. Additionally, academics are starting to question whether they should assign copyright in their own publications to a commercial publisher. Arguably the biggest concern of the open access movement has been the restrictive licensing models of large publishers that effectively lock the general public out of accessing the outputs of publicly funded research. Many in the open access movement maintain it is not anti-copyright. In fact websites such as the SHERPA/RoMEO website (University of Nottingham, 2015), developed by Jisc and hosted by the University of Nottingham, have done much to raise awareness of publishers' copyright policies and help ensure that content deposited in open access repositories is there with permission from the publisher. A key advantage of open access publications for the e-learning community is that research output can be used (often by simply linking to it) without the need to pay additional permission fees to publishers.

Meanwhile the open educational resources movement has its origins in

2001 when MIT launched its OpenCourseWare Initiative (<http://ocw.mit.edu/>), which was a pledge to make all their teaching materials available online for free. The term open educational resources was first used by the United Nations Educational, Scientific and Cultural Organization (UNESCO) in 2002, which described open educational resources as:

typically made freely available over the Web or the Internet. Their principal use is by teachers and educational institutions [to] support course development, but they can also be used directly by students. Open Educational Resources include learning objects such as lecture material, references and readings, simulations, experiments and demonstrations, as well as syllabi, curricula and teachers' guides.

UNESCO, 2002

The Organisation for Economic Co-operation and Development (OECD) describes open educational resources as 'digitised materials offered freely and openly for educators, students and self-learners to use and reuse for teaching, learning and research' (OECD, 2007). It is important to be clear about the distinction between the terms 'free' and 'open' and how they are used together in this context. 'Free' materials may be offered for no cost but under strict copyright protection without permission to repurpose, adapt and re-use. 'Open' educational materials are deliberately licensed by the creator for re-use by others, sometimes without the need to reference the original author, and without restriction on how and in what context the materials can be used. However, free materials, even online, are not necessarily open.⁶ The term 'open practice' (Beetham et al., 2012) is increasingly being used in higher education to describe a range of open educational activities, such as developing and using open educational resources, developing open courses such as MOOCs, practising open scholarship through sharing research openly and using open-source technologies. Open practices inevitably involve staff developing an understanding of copyright and licences and provide an opportunity to discuss the issues in this context. The copyright questions associated with delivering open education and open courses are explored in more detail in Case Study 4 about UCL (see pages 106–10) and in Chapter 5.

Conclusion

This chapter first explored what online learning is and how teachers might wish to use content in the digital environment. It also considered how e-learning differs from traditional face-to-face teaching and why when we put course materials online, copyright issues become more pertinent. It has examined how the UK and several other countries approach copyright law, the exceptions that exist and their impact on online education. The chapter has shown how developments in technology are driving reforms to the existing copyright regimes throughout the world. In many countries a satisfactory balance has yet to be achieved between protecting the economic wellbeing of rights holders, and the needs of educators to be able to share, copy and disseminate information freely. Recent copyright reform suggests that the needs of education can be balanced more fairly against the need for copyright owners to receive just rewards for their endeavours. However, educators need to be mindful that copyright exceptions may only go so far, and online learning can be seen by rights holders as both a potential new market, but also a threat to their ability to exploit copyright works.

Notes

- 1** The background to this programme is discussed in greater detail by other authors (Rusbridge, 1998; Secker, 2004), and is outside the scope of this book.
- 2** The higher education sector tends to be better resourced than other sectors and consequently more likely to employ copyright experts to advise staff and students.
- 3** These include ‘the Net Generation’, ‘the Google Generation’ and ‘Generation Y’.
- 4** At the time of writing the legislation.gov.uk website had still not been updated to reflect these changes but links are provided to the Statutory Instruments and an unofficial consolidation of the Act in the reference section. Consolidated versions can also be found in legal databases such as LexisNexis and Westlaw.
- 5** copyrighthub.org – an industry funded initiative to streamline licensing of copyright works on the internet.
- 6** The difference between the two definitions of free is often expressed as ‘free as in speech, or free as in beer’.

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