

Copyright Maze

Issue 5 February 2011



Good day, colleagues – welcome to the first issue of the Copyright Maze newsletter for 2011. I hope you all had a good break over the festive season and have managed to cope with the amazing range of weather we've had in recent months. The rain is bouncing on the window of my office at home as I write this edition – I'm writing it on a Saturday morning because for the 10th week in a row, I can't get on my golf course – and being on the east coast of Scotland, we are

very rarely closed – so I'm suffering withdrawal symptoms from my favourite sport, but there are certainly no withdrawal symptoms from copyright – I've got a full edition for you – some news articles and some issues raised by recent enquiries to the copyright helpdesk which I run on behalf of Scotland's Colleges.

Alan Rae

Copyright Toolkit – Now Available

I was commissioned by Scotland's Colleges to refresh the Copyright Toolkit that I produced some years ago and which some of you have made use of over the years. As with a photograph, a toolkit such as this one is current up to the time it is written – even before publication, facts, opinions and advice have changed and although I want you to use it, comment on it, suggest additions, I do give my usual caveat – it's there for guidance only – it is not a legal document with guaranteed answers or decisions – and there have been changes since I finished writing it. I could probably update it on a daily basis, but then it would never be published.

Part of the purpose of this newsletter is to try to keep you up-to-date with copyright matters and I do hope to update the toolkit on a regular basis with amendments to chapters and new chapters as this wonderful world of copyright continues to evolve.

The Toolkit is available at www.scotlandscolleges.ac.uk/organisational/copyright/copyright.html and I hope you are able to make use of it. As ever, all I and Scotland's Colleges ask for is that you acknowledge



the author and publisher if you choose to use any or all of it on VLEs, for CPD, for student use etc. You cannot re-publish it beyond your own college without written permission from Scotland's Colleges and you cannot commercialise it in any way. Thanks.

Please let me know what you think about it – very happy to take comments, criticisms, suggestions for additions etc – I look forward to hearing from you.

Newspaper Licensing Agency v Meltwater



I don't know if this one has passed you by or if you have noticed that our friends at the Newspaper Licensing Agency have scored a notable victory in the courts at the end of 2010. I'm hoping it's not going to have a significant effect on the FE licence but the worrying aspect is that the ruling adds strength to the NLA and if they feel they can flex their muscles further, they may look around for other licensees to review.

The upshot of the ruling affects Press Agencies, such as Meltwater, who aggregate news stories for their clients and then distribute them either through e-mails or on websites. Meltwater took out an NLA

licence in the belief that this allowed them to copy and distribute articles from NLA stakeholders to their (Meltwater) clients. NLA, however, had other ideas and were unhappy at the prospect of the end users (Meltwater's clients) not having an NLA licence either as they appeared to be copying the articles on to their work force, clients, etc.

Colleges may have to be aware of this ruling – the NLA FE licence you have (and I do hope you have a licence) only allows curricular use. I do know, anecdotally, of colleges who collate press cuttings about themselves, their students, events, the FE sector and distribute them to a wider audience, often now in a digital format and don't have the NLA extended licence which covers such use, and is considerably more expensive – in my opinion, that's a risk that may not be worth taking, especially as the distribution is done digitally.

And just to finish this topic, the judge in the case, Mrs Justice Proudman, has indicated that in her opinion, newspaper headlines can be protected by copyright, so any college which is proudly portraying their success on their website with the use of copied newspaper headlines had better make sure they have permission to do so.

Another victory for the licensors, I'm afraid.

Teachers TV

I've no doubt that many of you have come across Teachers TV, but in case you haven't, I would suggest having a look at it on <http://www.teachers.tv>. It used to be on TV on one of the Freeview channels, but it has migrated to the web, along with an exceptionally good resource bank. As the name suggests, it is aimed more at teachers and schools, but putting my FE lecturer's hat on, there are a number of resources which I would happily have used when I was teaching.

I mention this resource as an example of the alternatives that are available out with the recognised licensing schemes. I'll return to this theme in just a little while, but I do believe that colleges will very seriously have to look at alternative teaching and learning resources to keep down the costs of licensing. The NLA and PPL issues already mentioned may be small beer in

lots of ways, but they give us an idea of the way that rights holders continue to hold sway with legislation and the judiciary.

Yes, you could happily join the legions of people who apparently copy with impunity and wonder why on earth I keep banging on about this. It is theft – pure and simple, and there are indications that rights holders will not continue to tolerate this – and, as long as FE relies on public funds and is expected to show an example to its students, we must do the right thing and abide by the terms and condition of licences and the rules of legislation. We will continue to fight against the absurdity of many of the licences and their fee scales, but in my opinion, better to fight with right on our side than do the wrong thing and have no defences when caught.

PPL and Charities

And unfortunately, another turnaround that doesn't benefit anyone but the rights holders. From 1 January this year, the exemption in Section 67 of the 1988 Copyright Designs and Patents Act relating to charities and not-for-profit organisations not having to have a Phonographic Performance Limited (PPL) licence has been closed. The reason I'm drawing your attention to this is that I know of some colleges, using their charitable status, quoted this section as a get out for not having a PPL licence.



All colleges are expected to have a Performing Rights for Music licence (PRS) and again, I know that many don't have one – and I'm still of the view that the PRS licence is one which is desperately needing to be revised for FE. PPL has remained a bit of mystery for some, however – lost in the complexities of the arcane world of music licensing.

Basically, if you play music, you need a PRS licence. If you play recorded music, you need PRS and PPL licences. If you change the format of music, say from a CD to a video or DVD, then you need an MCPS licence (Mechanical Copyright Protection Society) along with PPL and PRS – it is complicated – the toolkit might help you see some light.

The change in the PPL licence is unlikely to cause any great increase in fees – it's just another licence that those colleges, who have relied on the exemption of section 67, will have to consider acquiring. There is a year's grace for charities and not-for-profits to organise themselves to get the appropriate licences, but from 1 January 2012, there will be no more exemption.

It may help you to know that PRS licences cover the payment of royalties to composers, publishers and performers. PPL collect the royalties to be paid to record companies and recording artists. So it is likely that the playing of any recorded music in a college, out with any curricular framework, will have to be licenced by both PRS and PPL – and if, for example, third party recorded music was being played on a college website, then an MCPS licence would also be required.

MPAA – Demanding Money with Menaces

You may notice a theme emerging in this newsletter – this next piece may never happen here in Scotland, but it's a cautionary tale from the Motion Picture Association of America – effectively the major cinema studios. They are not happy about the amount of pirated videos of their works which are circulating on the net and they are now targeting US colleges and universities in the belief that many of the infringing copies are created in these academic establishments with the crime compounded by the amount of dissemination across academic networks.

I come back to the "being seen to be doing the right thing" concept.

If you want more detail on this item, please look at <http://www.mpaa.org/contentprotection/higher-education>



Colleges Commercialising Their Work – Clear the Rights!



This is a topic which is coming to me on a very regular basis. Colleges have works which they would like to exploit or they are being asked by third parties for materials which the third party would like to publish and distribute. That's great, I'm all for colleges exploiting their own work for the good of the college, staff and students. But please be very careful that you have cleared the rights to do this. The work must be "clean" – it must either have been created by college

staff under the terms of their employment contracts, or the college owns the rights because they paid for them to be assigned by the previous rights holder.

There are considerable restrictions in all the licences that FE colleges pay for. The principal consideration for a rights holder who licences works to others is to ensure that the works are not further used, without permission, in the way of publication and dissemination – only the rights holder can do that.

When a college pays for a licence, it only pays to use the licensed works for its own staff and students – unless permission is applied for and received, no further exploitation of the work can take place. If a college records a TV programme under the terms of an ERA licence, the college cannot then burn DVDs of the programme and sell them commercially or distribute them for any non-curricular purpose.

Please, please check that you have the right to re-purpose, re-publish, put into a repository etc – if the work is not "clean"; you are taking a very big, potentially expensive risk.

Transferring Video to DVD – Are You Licensed?

Same with this one – it appears that many of you in Scotland's Colleges are looking at your video resources with a view to digitising them and either making DVD copies or uploading to a server for on-demand streaming. Both are fine, under the terms of the ERA and ERA+ licences, as long as the programmes were originally recorded, logged and labeled under the ERA scheme.

If the videos have been bought in, then you have no rights to digitise under the ERA licence. You can contact the publisher (if you can find them) and ask for permission to digitise or ask if the programmes are available on DVD, for purchase.

Even if you have a collection of promotional and/or instructional videos given free to you by suppliers, manufacturers etc, by rights, you should still be seeking permission to digitise



Redistribution of Conference Materials

This is an interesting question that came in just before Christmas. We've all been to conferences and come away with very useful resources – the conference reports, speakers' notes and slides etc. What rights



do we have in colleges to re-use these materials? And can we incorporate them into our teaching and learning materials and even take it a stage further – exploit them commercially.

You know the answer by now – no – not without permission – just because something is given away free (and I know that argument that you paid for them through the conference fee, but this doesn't wash) doesn't mean that you then have free use of them – you must ask for permission for any further re-use.

The materials may come with a statement and/or licence to indicate that they can be used freely – fine, you're off the hook, but for no other reason than honesty and courtesy, please make sure you acknowledge the source.

Alternative Image Resources – Google's Not Always Best

This is a recurring topic – aren't they all! For students (and for some staff) it's so easy to call up Google images when a graphic resource is required and happily download and use the photograph/image/illustration etc. For a number of reasons, however, Google isn't always best. Closer inspection of the details attached to a Google image invariably tells us that the image is "subject to copyright". Sadly, that doesn't deter everyone and they go ahead regardless. If you do check out the copyright of the image, you may find that it's covered by a Creative Commons licence and that could be fine for educational use – you may also find that the rights remain with someone else and again, these rights should be cleared.

Whisper it – you could always use your CLA licence to good effect! This is one area where the CLA licence is very useful – scan the image from a licensed text or periodical and as long as you acknowledge the source, you can use the image on your VLE – or you can even print it out/photocopy it.

I recently came across a lecturer who was hell bent on reproducing images from "The Simpsons" animated cartoon and was less than pleased when I pointed out that the images which they had already downloaded



were all from illegal websites (the Simpsons' owners, Fox, are very aggressive in take-down notices for websites illegally hosting Simpsons images) and then equally delighted when I said that the lecturer could easily scan from a Simpsons book, under the terms of the CLA licence. Yes I know it would be very difficult to spot the difference, but just think of the peace of mind!

DACS – Yes They Still Exist

I had an enquiry from a colleague just last week about the Design and Artists Copyright Society (DACS) and whether or not they were still in existence. Yes, they are, but are keeping a fairly low profile. DACS first came to our attention not long after the inception of the CLA licence when it became apparent that the CLA licence only covered text – DACS and their members were most upset that licensees were happily copying any photographs, illustrations, designs etc because we thought that the CLA licence covered the contents of the texts and periodicals and made no distinction between text and graphics.

The issue was quickly solved – DACS and CLA came to an agreement and CLA increased the fees to the licensees and acted as the principal licensor.

DACS did have another role in licensing the copying of commercially produced 35 mm slides, but I'm pretty sure that some of my readers may not even know what 35 mm slides are – not quite as old technology as Gestetners and Bandas, but not far short and very much a niche area.



DACS do still exist and actually produce some rather useful information on copyright and images – an area almost as complex as copyright and music, but they have been mulling over a licence to digitise those 35 mm slides that could only be photographically reproduced and we've been waiting for this digital licence for a number of years now. This digital licence is becoming less and less of an issue with the ready availability of images online – either legal or illegal! DACS don't seem to be in any hurry to bring out the licence and I don't think it will have any great impact as and when they do. To view the copyright advice, here's the link to get you started - <http://www.dacs.org.uk/index.php?m=5>

MPA – New Website – Same Old Song!



I don't know if any of you have ever had any dealings with the Music Publishers Association – they're the people who look after the printed music sheet industry, and are not noted for being either the most co-operative or forward thinking licensors in the world. I've had very little to do with them but do visit the website regularly to see if there are any developments. Imagine my joy when I looked at the website just a few days ago and discovered a whole new site – modern, easily navigated and on the face of it, up-to-date. So I found my way to the MPA code of practice – the prime source of information on what can and can't be done with sheet music – hopes were dashed, however – there, still stuck in the pre-digital days, the Code of Practice, still dated 1992

Copyright is difficult enough without the major licensors at least making a pretence of keeping their guidelines and licences up-to-date. They have a very weak argument, in my opinion, trying to prevent infringement, when they can't keep up with legislation and technology. Colleges would rapidly go out of business if we didn't keep up with the very latest educational and technological developments – rant over!

CLA – Update

Not a huge amount to report just now. I have a meeting in London with our colleagues from Association of Colleges in early February and we are hoping that CLA will put forward some concrete proposals for the licence they are hoping to launch in August.



As avid readers of this newsletter will know, I am on a crusade to reduce CLA fees and to campaign for a radical change to their licence – from the so-called “blanket” licence to a transactional licence which would give both the licensor and licensee a very accurate record of what has been copied/scanned and how much the activities would cost.

Transactional licences haven't always been popular, but there is strong evidence – and thanks to those of you who have contacted me – that they can be made to work, through new technology in photocopiers, scanners and computers making manual record-keeping unnecessary.

Please continue to let me know what your views on this matter –

- *Do you know how much your college is paying to CLA?*
- *Does this represent good value for money?*
- *Are you copying/scanning sufficient licensed works to justify the amount you pay?*
- *Is your college actively involved in using/researching alternative sources of teaching and learning materials that are already licensed and which have the copyright cleared for use in the classroom and VLE?*

Scotland's Colleges pay between £750,000 – £1,000,000 to CLA each year – in anyone's terms, that's a lot of money – I know we're not getting value for money – do you agree?

And Finally

That's it for this edition of the newsletter – my continuing thanks to David McCreight for his design and layout skills – silk purse out of a sow's ear, comes to mind. I would be very happy to hear your views and comments on this publication. Please feel free to circulate it to any interested colleagues and students. And please let me know of any colleagues who would like to be added to the mailing list. If you do choose to circulate it, put it on a VLE, etc, please reproduce it in its entirety. The photographs are the copyright of Photos.com and cannot be disembedded for any other purpose. Please credit me with writing the newsletter – I'm happy to take the blame.

Also very happy to hear from anyone with a copyright or licensing question – please don't be stuck or take an unnecessary risk for the sake of asking a question – this is the service I provide through the helpdesk run in association with Scotland's Colleges – your college is paying for this – please make use of the service. Thanks for reading.

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