

Copyright Maze

Issue 3 May 2010



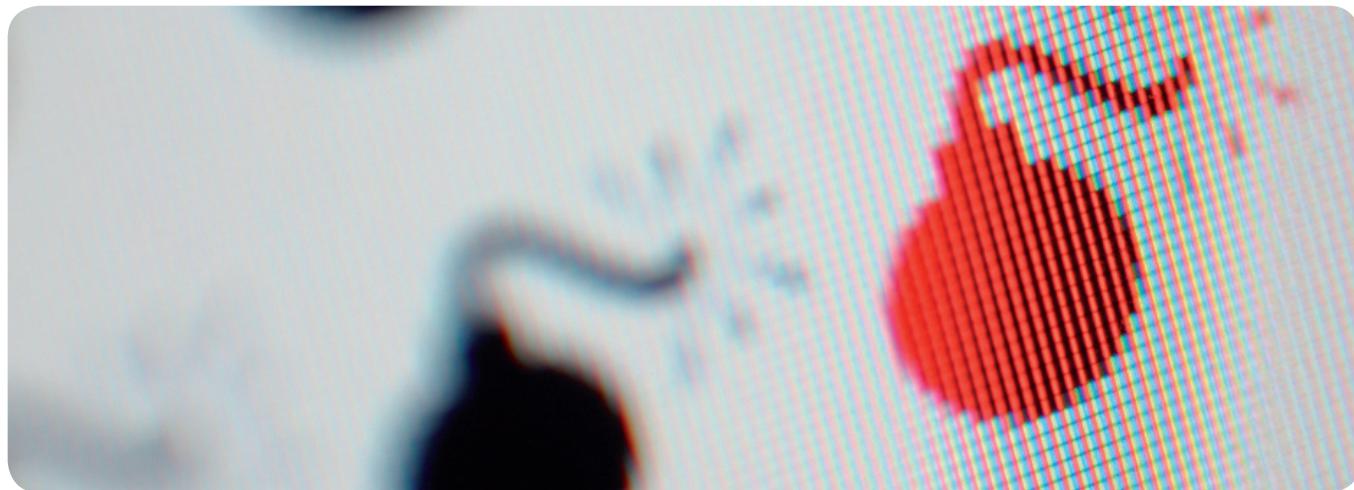
Good day colleagues – I hope you are all well and that life and copyright are treating you well. Thanks to everyone who has been very positive about the newsletter. I'm very happy to provide this service, along with the Copyright Helpdesk, which all Scotland's Colleges are welcome to access, free of charge. If you have any copyright issues at all, please contact me and I will do my

best to provide you with a solution or some suggestions to help with the problem.

This month's newsletter addresses some existing issues and some which are likely to become more relevant in the coming months.

Alan Rae

Pictures on the Web



I know I've spoken about this in the last two newsletters, but I cannot emphasise enough, the care, attention and rigour that member colleges must exercise when including images on a website, be it on the inter- or intra-net. We know that Getty Images, in particular, have been very active recently, in trawling websites (they don't actually do it themselves – they outsource the web crawling service, but they write the resulting letters) and have contacted a number of establishments throughout the UK. Their letter usually demands a penalty for the infringement of one of their images and no

matter that the transgressor immediately removes the image, Getty will pursue for back payment for the time that the image was available. There are numerous blogs on the web about this activity, the rights and wrongs and methods for avoidance and strategies for not paying up – but do please be very careful – be 100% sure about the origin of any image that is placed on a web site and be very clear about the licensing arrangements if it is a third party image – copied, bought, licensed, student generated, staff generated.

Student Copyright



Unfortunately, I don't have an answer for this one – this really comes down to individual colleges, but if your college doesn't have a policy, I would suggest that someone looks into this to ensure that risks are being covered and that the likelihood of any contentious issue is mitigated.

The Copyright, Designs and Patents Act 1988 as amended, clearly states in Section 11 (1), that 'the author of a work is the first owner of the copyright in it ...' The clause then goes on to make the point about the ownership of copyright belonging to an employer if the work is created in the course of employment. Students are not employees, so a college cannot make the assumption that it has the copyright of any work produced by a student which is then exploited by the college.

The reason that I have raised the subject is due to the number of enquiries I've received about student copyright in recent months. There are a number of reasons for this increased interest – students who upload materials created in the course of their studies, to the web – perhaps FaceBook, Bebo, Vimeo or Youtube. The issue here is not only who owns the copyright in the work, but has it been cleared for the use of any third party materials? One student, particularly proud of their piece of course work, which included third party music, uploaded to YouTube, only to find that it was taken down because the music hadn't been cleared. Another, again uploading to YouTube was dismayed to find out that their work was being used by another site – what they didn't realize is that when materials are uploaded to YouTube, the Google owned site, ownership of the work is automatically licensed to YouTube, who also then claim the right to sub-license – it really pays to read the small print in the YouTube licence.

Another reason for the upsurge in enquiries in this area is the growing interest in iTunes U- <http://www.apple.com/education/itunes-u/> - a major initiative by Apple to disseminate teaching and learning materials from leading educational establishments (including Scotland's Colleges of course) to as wide or as restricted an audience as the establishment requires. If the materials which are being uploaded to iTunes U have been generated by a student(s), then what's the copyright position? Again, it's a very worthwhile exercise to go through the materials to ensure that any necessary permissions have been applied for and received – and remember, the third party to whom you are applying for permission, may refuse to grant permission for any purpose – just because you apply, doesn't mean to say you'll get. Rights owners are becoming much more restrictive in their permissions, especially when granting permission might mean a much wider distribution of their materials than they want – they may even want to distribute those materials themselves.

What options are available to a college when it comes to student copyright? Bearing in mind the clause from the CDPA 1988 which I quoted at the beginning of this article, the student owns his or her own copyright. For the college to use it, just as with any other third party who isn't covered by a 'blanket' licence – CLA, ERA, NLA etc – permission needs to be sought and granted. But surely a college can just use student work? Absolutely not – permission needs to be sought and granted. Some colleges have clauses in the student's matriculation documents to say that the college will own all the copyright of any work the student produces while undertaking their course and in some cases, the college goes so far as to say that they, the college, have the right to exploit that material in any way they see fit.

That's a very wide-ranging statement and might have difficulty standing up under restraint of trade terms. This approach pretty much amounts to getting the student to assign their work – that means that they sign everything over to the college – and unless there are constraints on the potential use of the materials and time limitations, the assignation is not dissimilar to what YouTube and other similar sites are demanding.

In my opinion, and please note, it is just my opinion, I think that if a college adopts this approach, they are likely to cause any number of problems for themselves and the students. An assignation such as that described above, means that the college becomes responsible for the student's work and any further exploitation – if the student wishes to exploit their work at any time, they now have to apply to the college to get permission to use their own work – not really a satisfactory situation. And is a college, having

taking assignation of potentially masses of student work, ever going to find the time to catalogue the materials and make decisions about what and what isn't to be exploited – I really don't think so.

Far better that the student and college enter into a licence agreement. The student still owns his/her own work and allows the college to use it, under licence, for particular purposes and for stated time limits.

This may seem to be all quite unnecessary, but I don't think it could be any more important – especially for those students who are either going to work for themselves or be employed in the burgeoning creative industries – graphics, games, video, IT etc etc.

I would be more than happy to discuss this topic further with any college who feel that they would like further information.

Copyright Licensing Agency (update)

Not a huge amount to report at the moment, I'm afraid. There was a meeting at the end of March with representatives from both Scotland's Colleges and the CLA to discuss current licensing. The only concrete proposal to emerge from the meeting is that the current trial licence will now remain in place until the end of July 2011, so we have a full year and more to discuss what direction the licence will take. CLA did imply that any new FE licence was more likely to follow the recently introduced schools licence, rather than the HE licence, but there are still discussions to be held about the repertoire of the new licence and the reporting methodology.

The reporting seems to be a real stumbling block for CLA and their stakeholders – and I would certainly be resisting any attempt to introduce a reporting mechanism similar to that of HE which, to me, is cumbersome and unnecessarily complicated.

The CLA reps did indicate that they were hoping to add some web sites to their repertoire – an interesting development but one that I have a healthy scepticism about – I would want to see some very definite proposals for this before suggesting any acceptance – if they do manage to introduce this, rest assured that the fee will go up.

What I would welcome over the next few weeks, are your and your college's views on the value of the current CLA licence. I would very much like to carry

out a full survey of all college's use of CLA licensed materials, but this straw poll will be a good start. I would like you and your colleagues to consider whether or not you feel you are receiving value for the licence.

- Are you still photocopying third party materials?
- Has the amount of third party photocopying increased or decreased in the last 12 months?
- Is your college making use of the scanning clauses in the licence?
- If so, can you quantify approximately?
- Are you and your colleagues making use of alternative sources of learning and teaching materials which are already copyright cleared – I'm thinking particularly of JISC originated projects which can all be researched through JISC Collections.

Any thoughts and comments would be very welcome – budgets are tight in FE at the moment and there's a scenario where substitution of CLA licensed resources, through JISC collections or e-books and e-journals could represent resource savings. If you have a few moments to let me know, that would be great.

The Implications of the Digital Economy Act



At the time of writing this newsletter, Parliament is still hanging and I don't know what form it will take. Prior to the election, the Digital Economy Bill was pushed through in the 'wash-up' stage and it has been enacted. How it will affect FE remains to be seen – there may be further discussion and subsequent amendment depending on the administration, but a couple of points which were included in the bill do bear thinking about.

- The ability for copyright holders to force Internet Service Providers to block access to websites they say are hosting illegally copied files – this could have implications for colleges who allow students to upload materials.
- Owners of publicly accessible Wi-Fi hotspots will be liable for 'piracy' committed on these connections – again, this has implications for colleges who have such hotspots in libraries, refectories, common rooms etc.
- Compulsory internet disconnection for persistent internet pirates – this is the 'three strikes and you're out' philosophy which has already been implemented in one or two EU countries.

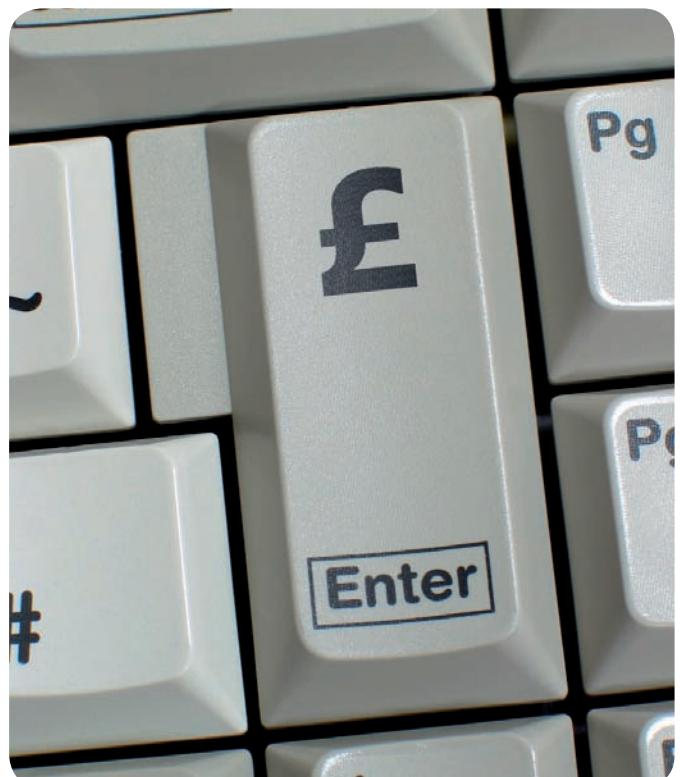
Colleges, I'm sure, will have acceptable use policies in place which should be able to deal with these three implications – but if not, it might be worth updating any existing policies.

Introduction of 'paywalls' by previously free to access websites

Whether or not this trend is in response to the Digital Economy Bill, I'm not sure, but we are seeing some interesting moves in this area. Most significantly, News International have introduced paywalls for the Times and Sunday Times websites. If you want to access the information, then you have to pay for it. This follows Rupert Murdoch's aggressive statements last year saying that the likes of Google were 'stealing his journalists' content' and that this was not a sustainable business model for his papers. He is determined to protect the intellectual property rights of his content. The Financial Times introduced such a paywall some years ago, and they claim great success with it – large numbers of subscribers paying annual fees – The FT, however, is a very specialized content provider and it's probably the case that the particular information they provide is worth more than general news.

Interestingly, Johnstone Press, the publishers of the Scotsman, have taken down their paywall which they introduced some months ago – apparently the traffic dried up considerably and they were having difficulty selling advertising for their website.

I think we will see quite a number of developments in this area over the coming months – technological



advances will encourage rights holders to try to manage their content more efficiently as they seek more sustainable and profitable business models.

Open University Off-Air TV recording – are you covered?



Long gone are the days of the tweed-jacketed, pipe-smoking lecturers standing in front of complex blackboards at all the hours of the night – OU programming has revolutionised in recent years and many of their programmes are now televised in primetime. Why am I telling you what you already know? Because I fear, from a number of recent enquiries, that some colleges are unaware that

OU broadcasts are **not** covered by the Educational Recording Agency licence (ERA) but by their own Off-air licensing scheme. There are numerous OU programmes now shown in primetime – either produced by the OU themselves or by companies that they have commissioned – 'Bang goes the Theory', 'James May's Big Ideas', 'James May's 20th Century', 'Climate Change', 'The Cosmos, a Beginner's Guide', 'Digital Revolution', 'Seven Ages of Britain', 'Coast', 'A History of Scotland' and 'The Money Programme' are just a selection of the broadcasts that are not covered by ERA.

The OU licence is managed by Open University Worldwide – www.ouw.co.uk and is a transactional licence – you pay for what you use. There are returns to be made, but overall administration is kept to a minimum. It's well worth checking your broadcast materials catalogues to ensure that you are covered by the correct licence.

i-Player – what use are you making of it?

Another enquiry which has been made on a few occasions recently is the status of the BBC iPlayer and similar services such as 4 on demand, 5 on demand and ITV player. I am being asked if programmes from these services can be downloaded and made available to staff and students. The short answer is 'no' – you're not supposed to be able to download programmes from these services in the first place – they are intended purely for streaming – I know that they can be downloaded and stored but that would be an infringement of the terms and conditions of use – and is not recommended.

The Educational Recording Agency (ERA) licence does not recognize iPlayer or any similar services as providing 'broadcasts' so these streamed programmes, along with podcasts, do not fall under the terms of the ERA licence. In the case of podcasts, this doesn't mean that they can't be downloaded and used – that's the purpose of many of them – they are just subject to their own terms and conditions in the licence from the provider – eg iTunes, JISC, BBC etc.

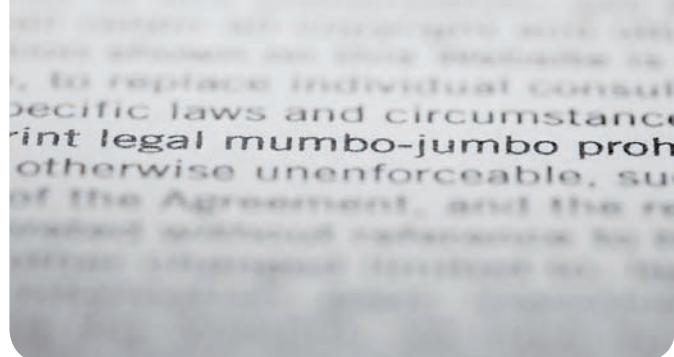
Another way of watching programmes over again is to log on to YouTube where 4 and 5 On Demand



now have programmes hosted. But they can't be downloaded either – they are only supposed to be streamed and again, are not covered by the ERA licence.

Always better, when possible, to read through TV and radio listings and record the programmes under the ERA licence terms. Another possibility these days is to consider Box of Broadcasts, (BOB) a service provided by the British Universities Film and Video Council – membership of this service should prevent any further missed recordings.

Terms and Conditions – useful information or cure for insomnia?



I've referred a few times in this newsletter to terms and conditions – the unavoidable small print accompanying a licence. You may or may not have read the T and C which comes with the CLA, ERA, NLA licences etc – they are reasonably digestible in comparison to those accompanying iTunes, YouTube, Google etc – but if your college is going to use any

service, then it is worth trying to read the T and C. You may very well end up sound asleep, but equally, you may miss something which could come back to cause problems. Many licences do not allow many of the activities that colleges might like to implement – transferring materials to a repository, loading on to an intranet, commercial use, marketing use, non-educational use, adaptation etc etc.

There was a salutary and entertaining tale told on a blog recently – *'Not one customer of online computer game seller Gamestation read the terms and conditions of sale on 1st April, the company has said. In an April Fools' Day prank, it has claimed the legal right to the souls of all those customers.'*

I'm not saying for a minute that iTunes, YouTube etc want your soul in exchange for the use of their service, but do you really know what they want? You might get a surprise!

Finally – a scam (yes, another one)

Just a brief warning to finish – a number of universities have received an e-mail purporting to come from the Motion Picture Association of America (MPAA – a genuine organisation) claiming that one of the network computers has been used to download infringing material. The e-mail is entitled 'Lawsuit Declaration (no. 28969)' – it is a hoax, but a convincing one – good luck!

That's it for this edition of the newsletter – my thanks to David McCreight for his design and layout wizardry. 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.

Contact:

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