

# Copyright Maze

Issue 4 November 2010

Good day colleagues – this edition of the newsletter has been a long time coming and I hope that since the last one, you've all managed some kind of rest and recreation over the summer months. Dark nights are back with us – but never mind, it will soon be the turn of the year!

What's been happening in the wonderful world of copyright? Well, I'm very pleased to say that I am now the lead person for all copyright and copyright licensing matters as they affect

Scotland's Colleges and along with our colleagues in the Association of Colleges, representing England, Wales and Northern Ireland, I have begun negotiations with the CLA in relation to the FE licence.

The newsletter will bring you up to date with the CLA developments and as usual, there are a few other topics which have cropped up in recent months.

Alan Rae

## Copyright Licensing Agency – Licence Negotiations

"The time has come," the Walrus said,  
"To talk of many things:  
Of licences--and copies--and scanning works--  
Of websites--and e-books--  
And why the CLA are too dear--  
And whether we get value for money."

(with sincere apologies to Lewis Carroll)

Yes, the time certainly has come to talk of these things. Scotland's Colleges have been working with a 'trial' licence since 2004 – annual renewals come and go and the only real change we have seen is the year-on-year increase in the fees through the agreed RPI adjustment. CLA have proposed that they present to us a new licence to be agreed by August 2011. At our first negotiating meeting in London on 18 October, it was very clear to me that CLA are not going to consider any reduction in fees – if anything, they hope to present us with new repertoire and rights which will certainly come with an added fee.



Given the recent rise, due to RPI, and the impending increase in VAT, and the recent spending review in Scotland, it's my opinion that the last thing we need is any further rise in CLA fees.

I really could do with your help on this matter. The issue we have with CLA is that neither side can definitely say what use is being made of the licence.

Virtually all my evidence is anecdotal, while CLA have a survey methodology that is far from comprehensive and which they seem to have difficulty extrapolating into data that can be used at negotiations. They claim, and they would, wouldn't they, that they have evidence of increased levels of photocopying in colleges. That's as may be, but they can't seem to tell us whether this increase, from a very small sample, is due to increased copying of third party materials or whether it is just an increase in copying of college materials.

Equally, I am being told that photocopying of licensed CLA material is in decline and that very few colleges are scanning any significant amounts of licensed materials either. So if that is the case, why are some of our larger member colleges paying in the region of £45,000 to £60,000 per annum to CLA – what on earth are they getting for this?

Until either or both sides can produce validated data, we are at an impasse. Unless – and it's a radical unless – colleges decide that they no longer require a CLA licence because there are adequate alternative resources of teaching and learning materials elsewhere. Now that is a radical, and very risky strategy and I would not want anyone to rush off, telling CLA politely what they might want to do with their licence, without giving this a lot of thought.

The CLA licence has considerable benefits – for example, why infringe copyright by copying unlicensed images of the Simpsons (for example), when the very same images may be available in a Simpsons book, which is covered by the CLA licence – no danger of cease and desist and take-down notices – no danger of unwanted letters demanding damages coming to the Principal's office.

Yes, there are benefits, but I want to know why we can't just pay for what we use – and if a college uses £60,000 worth of copying and/or scanning, then great – we would know at last that we were getting value for money – but that would still be a huge amount of copying and scanning.

Those of you who know me know that I'm not a librarian, so my grasp of book accessions, usage, cataloguing etc is tenuous. And this is where I need your help, comments, assistance, ideas – why can't we measure what we use? Books have barcodes on them – what do these barcodes tell us apart from the price? Do they tell us ISBN, publisher, author, number of pages? If so, that's exactly the information we need to relay to CLA so that they can charge us accordingly and they then have very accurate records for the distribution of fees to their stakeholders, the authors and publishers.

The negotiations will go on – the next meeting is scheduled for 6 December – I am hoping that CLA will come to the table with some concrete proposals relating to fee structures, repertoire and rights that suit the teaching and learning purposes of FE colleges throughout the UK. Realistically, I think we'll probably go round in circles until someone, somewhere, can propose a workable system for simple, fast recording of usage of licensed materials for copying and scanning.

I will keep you posted – and please, keep me posted with any thoughts that you and/or your colleagues have on this matter – Tesco, Asda, Sainsburys and Morrisons know what we buy each time we're in the store and target us accordingly – we're not huge supermarkets, but we must surely be able to use similar technology – I would be very surprised if it didn't already exist.

Apologies for going on at some length about this – as a group, Scotland's colleges are paying close to £1,000,000 per annum to CLA – that's not going to make a massive dent in the budget deficit, but I'd much rather be saying to College Executives that we have saved 25 – 50% of the fees rather than shamefacedly admit to having agreed to yet another increase. CLA are monopolistic in their approach – there are many, many alternative resources available to Scotland's colleges – please search them out and use them.



# A Bright New Dawn for UK Intellectual Property Legislation?



In the past week, David Cameron announced that the coalition government was going to review the current IP laws in the UK with a view to moving more to the American 'fair use' doctrine, which he seems to think is preferable to our 'fair dealing' exceptions. Apparently Google told Mr Cameron that they would not have been able to set up their business under UK copyright laws – too restrictive, allegedly. I'm not so sure about that – agreed, the American 'fair use'

principles are different from ours, but Google, for one, are still in dispute with many rights holders, not just in US, but throughout the world, over their aggressive approach to copying books for their archive.

Another aspect to consider is that much of our Intellectual Property legislation, following the 1988 Act, has been strongly influenced by European Directives, which in turn, take recognition of advice from the World Intellectual Property Office, which is looking to standardise and modernise IP laws globally. Don't hold your breath for any great shake up that is likely to affect colleges.

The only tiny glimmer on the horizon, comes, unsurprisingly from Europe where the Commission is looking into the position of the collecting societies, so beloved of us all – the CLAs, ERAs, PRS, PPLs etc etc – again, I wouldn't bet the house on anything happening soon, but if we all keep chipping away, who knows what might happen?

## Video on Demand

This has raised its head again – I keep getting asked why colleges can't use the likes of i-player, 4 on demand etc. The reason you can't use them is that they are not defined as broadcasts, and as such, do not conform to the ERA licence. The same applies to podcasts distributed by the BBC. Each of these services is subject to its own terms and conditions – most of which are guaranteed cures for insomnia. If you or your students do miss any broadcasts, use TRILT ([trilt.ac.uk](http://trilt.ac.uk)) or take a look at Box of Broadcasts ([boxofbroadcasts.com](http://boxofbroadcasts.com)) both of which can help with indices of programmes and the opportunity to have missed programmes added to your collections or made available to students through your VLE.

Of course the situation has been complicated by the introduction of 4oD and Demand Five now available on YouTube. These services aren't covered by your ERA licence – and for the moment, don't look like they will be. That's not to say that they are not licenced – they are – they come with their own terms and conditions which are quite specific - private, non-commercial use, no downloading or saving and certainly no



communicating to the public. But there's nothing in their terms and conditions which prevent you from linking to the relevant programme through your VLE. Your decision to do that may depend on your own college's quality and acceptable use policies.

If you are having trouble sleeping, do read the terms and conditions – and please pay particular attention to those clauses relating to any material which is submitted to those services by you, your college, your students – talk about signing your life away!

## CLA Introduces New Licence

Please don't get too excited – there hasn't been any magical transformation between the first article of the newsletter and this one! CLA have, however, introduced a new, free, immediately available licence to help people who have a 'print disability'. Under the terms of the 2002 Visually Impaired Persons Act, those with visual or physical impairments which prevented reading are allowed, under certain conditions, to have accessible copies of the works made available to them.

That's all well and good, and CLA incorporated this act into their FE licence – but those left out were people with a 'print disability' – a term which is used

to define dyslexia – and dyslexic students have not benefitted either from the VIP act or from the terms of the CLA licence – until now.

Various interested parties have come together and lobbied publishers and authors (main CLA stakeholders) to seek concessions for those with dyslexia. This licence allows organisations to reproduce copyright works in a format accessible to people with print disabilities, such as large print, braille or audiobooks, and circulate them to people within the community.

Happy to take any questions about this new licence.

## Be Careful What You Tweet For



This isn't strictly a copyright issue, but one which came to my attention when reading material from the BBC's Technology critic, Bill Thompson. The story, which is available at <http://www.bbc.co.uk/news/technology-10740954>, is a salutary lesson for colleges who may be using or thinking of using Twitter and Facebook as learning tools. The clear message from the story is to take care about any comments that are posted to these sites. It would appear, according to Bill Thompson, that these comments are not private – they leave a traceable trail and any comments, which are directed to, or are about other people, may be clearly visible to an audience that the posting person doesn't realise exists.

## CLA Successfully Sues for £40,000 Damages

Back to our favourite friends again – and another salutary lesson, I'm afraid. CLA have successfully penalised an English county council for copyright infringement. Yet again, the case didn't come to court with the council agreeing to pay the 'compensation' – so it looks as though they couldn't defend the case. In the press release, CLA again tout Copywatch, their whistle blowing system where provision of evidence of infringing can lead to a 'reward' of up to £100,000 for the whistle blower.

This is one of the things we have to be careful about in our negotiations with CLA. When asked the question at a recent meeting – 'what would happen

to a college who withdrew from the CLA licensing scheme?' – the answer was a categorical 'We would put them on copywatch and wait for the whistle blowers!' This is what we're up against.





# Using DVDs for 'Non-Educational' Purposes

I've had a few enquiries about this matter in the last couple of months. I have been asked what the position is regarding the use of recordings of materials licensed by ERA and/or purchased DVDs for uses other than instructional or educational – eg, student film club, fund-raising events, public showings etc.



The position, according to both the Copyright Act and the ERA licence is quite clear – here's my summary –

Materials recorded under the terms of the ERA and ERA+ licences **MUST NOT** be used for any purpose other than instruction or education – the materials must only be used by authorised persons (staff and registered students) and must be used within the licensed educational establishment.

Equally, any DVDs of any recorded programmes, whether TV series collections, cinematic productions, documentaries etc which have been bought for use in a college, can only be used for instruction, by authorised personnel, in an educational establishment. And I would only be using such programmes for viewing in the college itself – there is certainly no licence allowing you to make such works available on your VLE.

As soon as these parameters are exceeded, the rules change. And they can become quite challenging. Strictly speaking, if a college wants to show a DVD of a cinematic release for non-instructional purposes, then the college should source that movie from Filmbank (<http://www.filmbank.co.uk>) They supply and licence copies for movies to be shown at film societies and for fundraising purposes – by the way, the fact

there is no admission charge at the showing, doesn't preclude the need to go through Filmbank.

So, if a group of students in a college decide to buy a DVD or bring one in and show it for any purpose other than instruction, they are in breach of the licence which comes with that DVD.

I am well aware that DVDs bought by colleges from suppliers such as HMV, Tesco, Asda, W H Smith etc. do carry a warning that they should only ever be used for a domestic, non-commercial audience, but if works purchased this way are used purely for instructional purposes, before an educational audience, in an educational establishment, then that would appear to be covered by S34 (2) of the CDPA 1988 – 'the playing or showing of a sound recording, film or broadcast before such an audience (educational) at an educational establishment for the purposes of instruction is not a playing or showing of the work in public for the purposes of infringement of copyright'.

There is also the point, which may not necessarily be a copyright issue, of the certification of the DVD which is brought in or purchased – many of the purchased DVDs are the full unedited versions – the version shown on TV, which can legitimately be recorded under your ERA licence, is often edited for timing, content, language etc – the two versions can vary considerably.

I think it comes back to colleges being seen to be doing the right thing – if colleges are lax in their approach to copyright, this can be taken as the standard by students who then show bad practice or ignorance when they leave college.

I don't know what the percentage of students going into creative work is, but when you consider the number of graphics students, software programmers, dancers, actors, photographers etc. who might set up on their own or work for another company, which is relying on careful management of intellectual property to earn money – and the students don't have a good grasp of IP, the last thing you want is for the employer to be told – 'Oh the college never used to bother about that' – not something you'd be happy to hear from craft construction, engineering and science students relating to health and safety.

Copyright is often ignored in these circumstances – we live in a copy culture – but that doesn't excuse bad practice – someone is watching!

# Someone is Watching!



And to finish this edition, there's been a lovely story circulating on the web and in a considerable number of blogs about an author who was upset to find that an article she had written had been lifted and published by a small newspaper in America. It's a salutary tale – if you want the details, please take a look at:

<http://www.addisonindependent.com/201011clippings>

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.

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