

Please Note: This guidance is for information only and is not intended to replace legal advice when faced with a risk decision.

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1. Introduction

This Copyright Law Essentials document provides a summary of copyright and its relevance to the work of UK colleges and universities. Copyright law in the UK derives mainly from the Copyright, Designs and Patents Act 1988 as amended since then.

Copyright protects original literary, artistic, dramatic and musical works, sound recordings, films or broadcasts, and the typographical arrangement (layout) of published editions. This will usually include works such as teaching materials and blogs, for example. Software (computer programs) and databases may be protected as literary works, in addition to other possible rights.

A college or university will usually be the owner of copyright works created by its staff, unless there is an agreement otherwise. These works can range from learning materials, information booklets and computer programs to music or paintings. Copyright also protects sound recordings, broadcasts, images and films that are created by the institution's staff.

A copyright owner has the right to control the copying, adaptation, publishing, performance and broadcast of the work, and under what conditions this may be done. These conditions may involve payment of a royalty or licence fee. The owner may also give or sell some or all of the rights to others.

Staff and students of colleges and universities are likely to use work that belongs to others extensively. Compliance with copyright law and instilling respect for the rights of others is therefore a necessary part of managing the risks associated with large numbers of learners engaging with learning environments and new technologies.

2. Copyright Ownership and Rights of a Copyright Owner

Who is the copyright owner of work produced in the FE or HE employment sector?

- The author of a work is the first owner of copyright in that work.
- If a literary, dramatic, musical or artistic work, or a film, is created by an employee in the course of employment, the employer is the first owner of copyright subject to any contrary agreement.
- In the case of works created by students in a college or university, copyright ownership rests with the student unless there is a valid agreement in the student contract that confers ownership on the institution. This, however, will only be enforceable if it passes a test of fairness in law.

What are the rights of a copyright owner?

A copyright owner has the following rights

- to copy a work
- to issue copies of a work
- to rent or lend the work to the public
- to make an adaptation of the work
- to perform, show or play the work in public
- to communicate the work to the public.

In addition the author of a copyright work has certain “moral rights” that always remain with the author. These are the right to be identified as the author of the work, the right to object to derogatory treatment of his work and the right to object to false attribution of a work. However, these rights do not exist where copyright in a work has been originally owned by the author’s employer.

3. Other People's Copyright Works

Copyright is a type of intellectual property and, like physical property, cannot usually be used without the owner’s permission. Typically the owner will license it for use by others, subject to whatever conditions he or she imposes (such as acknowledgement, payment, or restrictions on how the work may be used).

How can I use other people’s copyright works? How is the right to use a copyright work usually obtained?

The right to use copyright material is typically obtained

- with the permission of the copyright owner, as set out in the terms of a licence (such as the work’s terms of use), or through a licence issued by a collective licensing society which has authority to issue a licence on behalf of the copyright owner
- by seeking and obtaining permission directly from the copyright owner
- by means of an assignment (assignation in Scotland) of copyright in writing from the copyright owner.

A licence gives someone permission to do the acts which the copyright owner is entitled to authorise or prohibit without infringing copyright. This is how a great deal of material is lawfully used in the education context. In addition there are certain very specific situations where it may be permissible to make use of someone else's copyright protected works without seeking permission from the owner. For example, it is not necessary to get permission in order to use a insubstantial (i.e. trivial) part of a copyright protected work.

What are the exceptions to copyright?

There are a number of exceptions in copyright law which allow limited use of copyright works without the permission of the copyright owner. In the education context relevant exceptions include:

- fair dealing for non-commercial research and private study, criticism and review
- non-exact copies of works for teaching purposes in educational establishments (such as copying material by hand)

4. Copyright and the Internet

Even if material is available on the Internet, permission will still be required in order to reuse the material (such as copying it, adapting it or dissemination of it by a different means or in different formats). Some websites may give information about the permissions (licence) which is granted to users, which will clarify what can and cannot be done with material.

Particular care should be taken in relation to materials (such as videos and music) which have been put on the Internet by someone other than the copyright owner. In this case, the owner gives no rights, and reuse of the material is likely to be infringement of copyright.

5. Infringement

Where the whole or a substantial part of a work has been used without permission and none of the exceptions to copyright apply, copyright is said to have been infringed.

What constitutes infringement of copyright and what are the likely consequences?

Use of a copyright protected work without its owner's permission may be a civil infringement and/or a criminal offence depending on the circumstances. Copyright is infringed if a person does (or authorises another to do) any of the exclusive acts restricted by copyright without the permission of the owner, in relation to the whole or a substantial part of a copyright work. What amounts to a substantial part is not defined in law but it is quite likely that even a small portion of the whole work will still be a substantial part.

How do copyright owners enforce their rights?

Copyright is essentially a private right so it is generally for the rights holder to decide what to do when his or her copyright is infringed. The infringer could be taken to court and can run the risk of having to pay compensation to the copyright owner. They could also face:

- having an injunction (interdict in Scotland) taken out against them to stop use of the material
- being ordered to surrender the copyright material to the copyright owner
- a order requiring that infringing goods be destroyed or delivered up to the copyright owner, and that any resulting profits from the infringement are paid to the copyright owner.
- Where deliberate infringement of copyright is undertaken as part of a trade or business, it may be a criminal offence, punishable by an unlimited fine and up to ten years' imprisonment.
- In addition, a person or institution committing infringement may face damage to their reputation, a loss of confidence in the reliability of their materials, the inconvenience of having to withdraw materials at awkward times, and a loss of trust by publishers and other copyright owners.

6. Permitted Acts

When is the use of a copyright work not an infringement?

- Use of a copyright work is not an infringement if it is used fairly and with acknowledgement, for the purpose of non-commercial research, private study, criticism or review.
- It is not an infringement to use a copyright work if it is permitted by a licence (whether given by specific permission, a pre-existing licence or permission given by terms and conditions).
- Copyright in a work is not infringed by its incidental inclusion (non-deliberate background inclusion) in an artistic work, sound recording, film or broadcast.
- Copies of a copyright work can be made for visually impaired persons if it is for the personal use of the visually impaired person and the original work is inaccessible without adaptation. The format needed must not be already commercially available, the author of the work must be acknowledged, and making the copy must not interfere with legitimate exploitation of the work.
- By the use of the CLA Print Disability Licence, similar rights are extended to all disabled persons in relation to many printed materials.

Are there any conditions on using copyright material for educational use?

Copyright material can be copied for educational purposes if the copying is not done through reprographic means (e.g. by means of photocopying, facsimile, scanning or other mechanical device) and the source is acknowledged. The copied material cannot be used for commercial purposes.

7. Duration of Copyright

How long does copyright last in various works?

The duration of copyright may depend on whether a work is published or unpublished, whether the creator is known or unknown, and whether transitional arrangements from previous copyright legislation apply. However, in general terms, following the end of the year of the death of the creator(s), copyright lasts:

- 70 years for literary, dramatic, artistic and musical works, films and video recordings
- 50 years for sound recordings and broadcasts
- 25 years for the typographical arrangement of published editions.

About JISC Legal

JISC Legal, a JISC Advance service, provides guidance to prevent legal issues being a barrier to the development and adoption of new ICT within the education sector. Through a range of activities including guidance publications, webcasts, an enquiry helpdesk, talks and seminars, it provides support to a wide range of staff within FE and HE, including managers, IT directors, administrators, and academics, with the aim to make best use of technology in developing institutional effectiveness, without legal issues becoming a barrier to appropriate use.

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