

Copyright and Distance Education

Trainers' Kit

The Commonwealth of Learning

and

Christine Swales

THE COMMONWEALTH *of* LEARNING

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Introduction to the Toolkit

This toolkit provides a variety of resources designed to assist you in preparing and offering a workshop that introduces participants to copyright as it relates to distance education. It describes the basic features of copyright, identifies institutional issues and concerns, and outlines ways to deal with them. It is appropriate for:

- academic staff involved in writing and presenting course materials;
- administrative staff involved in publishing, purchasing, selling, and presenting courses and course materials; and
- institutional staff involved in setting up procedures and policies on courses and course materials through central administration, the library, or a learning resources centre.

These workshop materials are arranged into six topics. Each topic begins by identifying a number of key terms and issues and ends with an activity which usually requires some specific information from the participant specific to their institution.

Overheads and handouts highlight the key concepts in each area and can be used to generate additional activities. You can also expand the key terms and issues identified at the opening of each topic into handouts. Exhibits provide a standard copyright permission pro forma, sample contracts for transfer arrangements, and separate activity sheets. Your handouts should also include copies of documentation of, for example, national legislation or institutional contracts, and other local information required in the activities. These will need to be customised for each institution and group of participants and are indicated in bold type in the activities.

You should involve your workshop participants in the generation of additional examples, issues, and practices that draw from their own experiences. Each institution and individual will be operating in the context of their own national legislation, and under different international conventions. Each experiences different infrastructures and approaches to the legal aspects of copyright. In addition, the national and institutional culture will direct each participant's views and expectations. These guidelines offer a generic framework for the sorts of copyright issues that need to be resolved in a distance education environment. Any workshop on copyright and distance education needs to be based on national legislation and the international conventions; consequently, you will need to draw examples, illustrations, and practices from that same environment.

The materials contained in this toolkit are not intended to be a legal course in copyright; however, they do identify some of the pitfalls and problems. There are no ‘objectives’, no prescriptions, and no statements of what participants should be able to do as a result of having worked through these materials. However, participants will find that the questions in the activities provide a very useful and comprehensive framework within which to build a coherent and convenient strategy and approach to copyright practices and procedures in any institution. Participants will need to clarify their position under their own jurisdiction and through specific legal advice. You will need to provide a bibliography identifying sources of national legislation and codes of practice and appropriate locally available information to supplement your workshop.

Each time you prepare for a workshop, you are faced with new audiences, new contexts, and new challenges. Designing an effective workshop is similar to designing an effective course: the participants’ needs and contexts come first, and your decisions about what material to use and how you will present it depend on what you know about your audience. The materials are not intended to be an outline of an actual workshop. You may decide, for example, to change the order of the topics to suit your participants’ needs. Perhaps you will want to identify the key issues from international conventions in Topic 3 (International Conventions and National Legislation) before you get into the detail of Topic 2 (Copyright and Distance Education). The design of your workshop is also influenced by your own experience, expertise, and point of view. You bring a wealth of knowledge, skills, and understanding to your task. This trainers’ kit can only aim to supplement your own resources and to offer you some ideas and materials that you can use in your own context.

Christine Swales has spent many years involved in distance education mainly in Hong Kong, China, and the UK. Her extensive experience has been in the writing and development of courses and programmes and also their transfer between institutions. As well as addressing overarching concerns, this has also required detailed attention to issues such as copyright. She currently works for a number of British institutions on developing their distance learning programmes for home and overseas presentation.

TOPIC 1

The Basics of Copyright

Key terms and issues

copyright ~ intellectual property ~ author ~ literary works ~ artistic works ~ musical works ~ dramatic works ~ copyright protection ~ term ~ public domain ~ economic right ~ licence ~ assign ~ reserve ~ moral right ~ paternity ~ integrity ~ false attribution

What is copyright and why is it important?

In any teaching and learning environment, but particularly in a distance learning situation, a key issue for teaching and administrative staff in the development and presentation of student materials is **copyright**. Why?

- Instructors use a wealth of different materials whether they are teaching in a face-to-face situation or operating in a distance context. Many of these materials are protected by **copyright law**, which protects the owner's rights and outlines appropriate use for the user.
- Using someone else's material without their permission is **illegal** under most world-wide jurisdictions and you can be prosecuted.
- All organisations, especially academic institutions, must respect copyright laws as they apply to domestic and foreign environments. International co-operation on copyright issues is essential for the continued creation and distribution of materials, whether intellectual or physical.

As well as legal and economic factors, moral and ethical concerns arise with copyright-related issues. These are particularly important in the area of distance learning. As education costs rise, and learning institutions struggle with budgetary restrictions, more governments are considering distance education as an effective alternative to conventional face-to-face instruction. The ways that these distance learning materials are developed, transferred, and used are important to all users and originators.

Copyright protection provides creators of original materials with financial and other incentives so that they can continue to create new material without fear of their work being stolen or misused. Everyone is affected by copyright. Whether you are a writer or

instructor creating original material, or a student or teacher using that material, you must respect its ownership. This respect is essential in maintaining a balanced and regulated flow of knowledge. Copyright laws provide a measure of insurance for the continued output of original works and the creative efforts from which we all benefit.

Claiming ignorance about who owns copyright material is not acceptable. Primarily, your own presentations and your own institution, staff, and students will be affected whether you have originated or bought the materials. In addition, any subsequent transfer of distance learning materials from one environment to another is likely to fail as ownership of all materials must be clear. The agreement must indicate what the owner of the rights is allowing the user to do, under what conditions, and for what remuneration. We look more closely at this issue in the Topic 2 (Copyright and Distance Education).

Definitions

You probably have a vague idea of what copyright is and could ask a number of relevant questions, for example:

- What is the difference between copyright and intellectual property?
- What do all the words we generally associate with copyright mean?
- Do they have the same meanings in all environments and contexts?
- What are moral rights and economic rights?
- What is the difference between licensing and assigning rights?
- What does 'in the public domain' mean?
- What is plagiarism?
- How much material can I use from a published book, article, or course before I infringe copyright?
- Surely, I can copy material for educational use?
- What does 'fair dealing' mean?
- We are not selling the copies, we are just providing them to students as part of a set of learning materials, so surely it is acceptable to use copyright material?
- How do the international conventions work across countries and tie in with appropriate national copyright legislation?

- We have bought course materials from another institution, so surely copyright is their problem?
- The material is available on the Internet, so surely it is fine for us to use?

These questions are explored throughout this toolkit. First, though, we look at some important definitions that will help answer these questions as you proceed through the workshop. We start with ‘intellectual property’.

Intellectual property

Intellectual property is any ‘intellectual’ material or ‘works of the mind’ belonging to the original creator. It is the form and structure in which an idea is presented, for example, how a novel is written – the words, the characters, and so on. It is fundamental to the material. **Copyright** concerns the right to trade with this material. Intellectual property is also protected by trademark and patent legislation. If you recognise the meanings of the words ‘intellectual’, which results from creativity, and ‘copy’, which imitates those results, then you will find it easier to differentiate between the two concepts.

Copyright

Simply, copyright is the right to control the use of one’s own work. This work might be **literary, artistic, musical, or dramatic**. Creators or owners of materials have the right to reproduce their material for whatever use they see fit. They can give or sell this right to others or allow others to use the material under a licensing arrangement. You should assume any material is copyright-protected unless you know otherwise.

- Copyright law protects the **creator** and **owner** of material by making it illegal for others to use this original material without the creator’s or owner’s consent.
- Copyright law also protects the **user** of material as legal use of copyright material is identified. Legal use may involve authorisation to publish the work, to copy it, to broadcast it, to perform it in public, to translate or adapt it, to rent it, to make sound recordings of it, or to use it for other, for example, educational, purposes. National copyright legislation will specify exactly what is allowable under what conditions of ownership.

Copyright does not protect the underlying idea or facts, but only the content and form in which they are presented. There is no copyright in a conversation. However, if that conversation is recorded in some way, then the ‘record’, whether it is audio or written, is protected by copyright.

Note the following definitions and note also that items such as computer programs, sound recordings, typographical arrangements, databases, compilations, and adaptations are specified only in some national legislation:

- **author** – has two meanings: the author is the writer (**creator**); the author gives authority (**permission**);
- **literary** – written down: letter, word, list, course, novel, poem, translation, compilation, edition, computer program, database;
- **artistic** – anything crafted by an artist in a two- or three-dimensional form: painting, sculpture, photograph, illustration, chart, cartoon, typographical layout, drawing, technical drawing, map;
- **musical** – notes, words, sound of the notes, performer’s interpretation, a recording or broadcast of music; and
- **dramatic** – written words of a play, actor’s performance, a recording or broadcast of it.

Three conditions must be met before **copyright protection** is granted under any particular national legislation:

- The work must be original.
- The work must be **fixed**, or presented in a tangible form such as writing, film, or photography.
- A **qualified person** must create the work. A qualified person is one living in a country that is a member of the Universal Copyright Convention (UCC) or the Berne Convention. We discuss these international conventions in detail in Topic 3 (International Conventions and National Legislation). These international agreements include most countries in the world. Members are guaranteed copyright protection, regardless of the country where their work originated or the country where it is used. For example, the work of a Jamaican writer would be protected under Canadian copyright law if it was used in Canada, and the writer would be entitled to the same benefits that he or she would receive in Jamaica. Under these international agreements, copyright is automatic – once you have ‘fixed’ it, it is yours. It does not have to be registered in any way. Under the Berne Convention, material is still covered by copyright law and protected even if it does not carry a copyright notice. However, the same protection does not apply under the UCC.

Normally, copyright protection lasts for a finite period, or **term**. This term varies according to national legislation and the type of material. For example, there may be different terms or periods of protection in national legislation:

- **literary works** – often 70 years after the death of the author;
- **sound recordings and broadcasts** – often 50 years after creation;
- **typographical arrangements** – 25 years after creation in the United Kingdom; and
- **databases** – often 15 years after creation.

When copyright protection expires, the works become in the **public domain**, which means that anyone can use them in any way they like. Do not confuse public access with public domain. Just because material is easily available, for example, broadcast or on the Internet, this does not mean that it is in the public domain. Material in the public domain is either explicitly put there by the owner or its term of copyright protection has expired.

In many countries, copyright is an **economic** or property right; the creator can earn rewards from the efforts of their creative originality. In addition, it is a **moral** right that concerns the reputation or professional standing of the creator in the eyes of peers.

Economic rights

Economic rights can be **licensed, assigned, or reserved**. In all situations, responsibilities and obligations of all parties should be outlined in a contract:

- A **licence** is a long-term agreement that allows use of the material under particular conditions and payments, but the copyright is retained by the creator. For example, one university may allow another university to present a particular course in a particular environment on payment of a per student fee for five years.
- In **assigning** the economic rights, the creator gives the rights of the work in perpetuity to the new copyright owner with or without remuneration. For example, one university or an academic writer could assign the rights of a particular course to another university with a one-time payment.
- In **reserving** the rights, the creator withholds certain rights from assigning or licensing, for example, on-line delivery of materials. The originating university may license the print rights, but not allow the user to deliver that particular course electronically.

Moral rights

Three important moral rights are normally identified in national legislation:

- **Paternity** is the right to be identified as author or creator of the work. This right must be asserted in writing.
- **Integrity** is the right not to have the work altered (as, for example, in the colour reproduction of a painting), presented in an unsuitable context, or otherwise treated in a 'derogatory' manner.
- **False attribution** is the right not to have the work wrongly ascribed.

Moral rights remain with the creator and cannot be passed on to another copyright holder when assigning the economic rights. Moral rights are said to be 'inalienable'. Note that there are no moral rights for works carried out in the course of employment. Moral rights may become more of an issue with electronic forms of a work, which can be easily modified. Attribution is sometimes unclear with on-line materials.

Activity 1.1: The Basics

Investigate precise details of your **national copyright legislation**:

- How are literary, artistic, musical, and dramatic forms of copyright identified?
- Are computer programs and databases included in the legislation?
- Are economic and moral rights identified?
- Which moral rights are identified?
- What are the various terms of copyright protection for different types of work?
- What international convention is your country following?
- Can you envisage any particular problems that might be encountered in your environment?
- What are the latest developments in this area?

TOPIC 2

Copyright and Distance Education

Key terms and issues

distance learning ~ face-to-face ~ fair use ~ fair dealing ~ educational use ~ original material ~ warranty ~ plagiarism ~ referencing ~ libellous ~ obscene ~ blasphemous ~ negligent mis-statement ~ liabilities ~ third party copyright ~ transfer of materials ~ media ~ multiple copyrights

Implications

Copyright is an issue for all teaching situations. But what is the particular significance of copyright in **distance learning**? In a **face-to-face** teaching situation some use of copyright material is allowable without permission as the lecturer physically delivers the content. However, in a distance learning environment all the materials are delivered directly to the student through some medium; consequently the material must be copied, and thus copyright laws must be followed. Any preparation, use, or transfer of materials in distance learning needs careful scrutiny.

Some national copyright laws specifically address distance learning issues, for example, and so allow:

- simultaneously broadcasting lectures on closed circuit television to remote campuses as an extension of face-to-face teaching, but not at different times to these locations or to other remote locations;
- copying a certain amount of copyright material, with a blanket payment through national collecting agencies, or both;
- using copyright material in setting and answering examination questions; and
- ‘displaying’ and ‘performing’ in an educational setting, which may or may not extend to a distance learning environment through, for example, closed circuit broadcast, or transmission on a protected Intranet.

Your own copyright legislation may spell out **fair use**, **fair dealing**, or **educational use**, which will allow you to use certain materials in a distance learning as well as a face-to-face situation. However, once you transfer the material or use transferred material from another jurisdiction you will almost certainly be in breach of copyright. If you have been allowed to do certain things in a face-to-face situation, do not assume you can also do so

in a distance learning situation; it is unlikely that you can. Third party materials that could legally be used in a face-to-face situation are likely to require copyright clearance. We look in detail at **third party copyright** later in this topic.

Institutions deal with the complexities of copyright by adopting a variety of approaches and range of procedures for face-to-face and distance teaching. We cover some of these in Topic 5 (Institutional Implications and Procedures). However, regardless of the approaches to copyright, both producing and using institutions have certain obligations to protect all parties.

Original print material

An institution **producing** course materials needs to ensure that it **owns or has permission to use** all the material that it is delivering to its own students or is considering selling or licensing to another party. You cannot use or sell what is not yours unless you have negotiated and, if necessary, paid for the rights to do so. In addition, the author should uphold that he or she provides accurate material of the appropriate quality and may be required to provide a guarantee or **warranty**.

Primary areas of concern for an institution are:

- **intellectual property** and originality of the basic material;
- **legal liabilities** of content; and
- permission to use any **third party material**.

Intellectual property and original material

A producer may develop **in-house materials** using its own staff or hire an outside writer or developer. What are the problems? The materials are developed by, perhaps, a staff lecturer who writes part of a distance education course using his or her face-to-face lecture notes as a basis. The terms of employment need to be clear that anything created within or on behalf of the institution belongs to the institution; otherwise the lecturer will presume to own the intellectual property. We discuss this area in more detail in Topic 5 (Institutional Implications and Procedures). Perhaps an additional payment is made; then the lecturer must relinquish any rights through a separate contract. If the lecturer changes institutions, then the rights of the written materials stay with the institution, and the lecturer will need to recreate new materials at his or her next institution, although the same lecture notes could form the basis. External writers and developers are likely to write under contract and may assign copyright at the same time as receiving the fee payment.

All authors need to ensure that their material is **original** and has not been **plagiarised**, knowingly or unknowingly, from another source. The material also needs to continue to remain in their ownership. Perhaps they have already used part of their materials for a published textbook, and have transferred rights to the publisher. In this case, reusing the same material would be in breach of copyright. The work also needs to be **referenced** properly so that the source of ideas and comments is clear. A copyright reference also protects the work of academics from misuse by others. A comprehensive list of references following a recognised format and style should be included in all materials.

Libellous, obscene, blasphemous, and other liabilities

Academic staff and writers should teach and write without bias for sex, culture, race, and religion. In addition, consider the following legal implications depending on the national legislation and details of the employment, or other contract, between the author and the institution:

- **Libellous** statements must be untrue and directed at a named or recognisable individual. You cannot defame someone with a true statement. The defamation must have been published and shown to cause disparagement.
- **Obscene** statements must have a tendency to deprave and corrupt; material that ordinary people find lewd or disgusting may not be obscene.
- **Blasphemous** statements must have a tendency to deprave public morality and to attack religion using indecent, offensive, or intemperate terms.
- **Negligent mis-statement** of facts occurs if someone comes to any harm by following information or instructions, for example, in a laboratory experiment.
- **Other liability** is implied as we assume that information is accurate, reliable, and up-to-date.

Third party copyright

If course materials include *any* material from *any* other source, for example:

- a table, figure, or section from a textbook or course;
- a map, illustration, or diagram from any published source;
- a play excerpt;
- a poem;
- a photograph;

- an article from journal, magazine, or newspaper;
- an extract from a student's Ph.D. dissertation;
- music;
- video footage;
- broadcast material;
- a computer program; or
- the Internet,

then permission needs to be sought from the original copyright holder of this material or the **third party**.

Generally speaking, *all* of these third party materials need clearing for *all* use, not just for resale. However, in some countries and institutions, copying of particular journal articles, for example, may be allowed for education purposes.

The **third party** might also be a **student**. Exercise care if you use a student's case study or assignment answer as an example; you may need to seek permission from the student. (We come back to this issue in Topic 5 (Institutional Implications and Procedures).)

When you seek third party copyright permission, note the points in Exhibit A (Third Party Copyright Pro Forma). Unless you are set up and funded to seek world-wide rights for all forms of reproduction, resale, and media, you will probably negotiate some kind of restricted rights that allow, for example:

- use of print materials for staff and registered students only;
- use of other media materials for staff and registered students only;
- payment on a per copy or per student basis;
- use of print materials for restricted local use only;
- sale of print materials for one country only;
- sale of print materials for Commonwealth institutions only; or
- sale of print materials world-wide.

As your primary institutional responsibility is always to your own students and to your funding body, whether it is public or private, some restrictions on rights are likely because of insufficient funds. Generally speaking, the wider the clearance of rights both

geographically and to include all forms of reproduction, including electronic and broadcast, then the higher the costs will be. The copyright holders can give whatever permission they like and charge whatever they like, although in particular countries there may be guidelines for charges for, say, text extracts of a particular length for educational use. Perhaps the material itself also contains third party copyright that has restrictions and charges, and these must be taken into account.

It is the **author's responsibility** to identify third party copyright material and to use a tight referencing system for any quoted material whether or not it needs clearance. It is likely to be the **institution's responsibility** to seek permission to use the material, to pay any fees, and to ensure that acknowledgement is given as appropriate or as requested by the copyright holder. The copyright holder has the right to insist on the position and wording of the acknowledgement. If you do not intend to set up a copyright clearing system on an institution-wide basis, then the author must be responsible for obtaining permission. This responsibility usually deters authors from using other people's material.

If the author is unclear about ownership of any material, then it should be regarded as owned by someone else, and cleared as such. Some items may be jointly owned by, for example, an author and a publisher, or by joint authors. Permission will be required from *all* copyright owners.

If the copyright owner does not reply, then you cannot take this as tacit permission. If permission is denied for whatever reason, or you cannot afford the fee, then the author will need to modify the materials to reflect this. Do not try to 'get away with it' and publish without copyright permission.

Over time, as you create a system for clearance, you will soon develop a database of information about contacts, details of agreements, expected payments, and the likelihood of permission being granted. Using this database, you can advise authors to avoid specific material for which copyright is likely to be either withheld or too expensive.

Transferring print materials

It is difficult enough to prepare and clear materials for your own institutional use; with the transfer of materials between institutions and jurisdictions, the problems are compounded. Consider the situation when a user wants to buy what the producer is not in a position to sell, perhaps because:

- initial clearance was for staff and registered students only;

- there is a change of delivery mechanism – initial clearance was for print only and the user wants to deliver part of it on-line; or
- the user wants to adapt or translate the work.

In all these cases, and many others, not only does the copyright owner of the original material need to allow the transfer and subsequent use, but all third party copyright owners need to allow use in the new situation. As the **producer**, you may be prepared to re-clear the third party copyright material, in which case you will need information from the user on issues such as how the material will be used, the components of the course, adaptation, number of students, and presentation time. You could then re-clear the material on behalf of this one particular client. Or you could re-clear more generally, say for printed works for educational use in Commonwealth countries, and then you will be able to sell to other institutions. If you re-clear copyright on behalf of the user, then you would reflect this in the contract price. If you are not re-clearing for the user, then you need to provide details of all third party copyright holders.

Producers are likely to view the sale and distribution of materials as a revenue-producing activity and, as a result, they often adopt various clearance policies on a country to country basis and on a course by course basis.

On the other hand, there are several issues for a **user** to consider before transferring materials:

- Clarify the copyright situation for original and third party materials. As a user negotiating with an institution, you do not want an original author suddenly demanding money for what she or he perceives as his or hers, or admitting that it was plagiarised. You do not want to unknowingly use third party materials that have not been cleared and properly acknowledged.
- Provide the producer with details of how the learning materials will be used, the approximate number of students enrolled, the language of instruction or intended translation or adaptation, and any resale or onward sales you expect. Your requirements may fit the original third party copyright clearances or perhaps they can be re-cleared on your behalf.
- If you are re-clearing third party copyright yourself, then you will need to pay fees to individual copyright holders. If the producer has already cleared appropriately, then this will be reflected in the overall contract price. Or, if the producer re-clears specially on your behalf, then you will pay the producer directly, who will then pay the individual copyright holders. Whoever does the initial clearing and any subsequent re-clearing, a lot of administrative follow-up is required. And in the event that permission is denied, which it may be, then the original material will need modifying.

Note that use of some published materials is very expensive and you may wish to simply avoid using them. However, as this then becomes adaptation of the course, you will need to agree with the producer, and include details in the contract. Perhaps you can replace this third party copyright material with other reference material, or enable students to access through a library or database. See *The Facilitation of Transfer of Learning Materials Manual*, also published by The Commonwealth of Learning, for more help on this and related issues.

Media

Some copyright issues are generic, but there are specific complications with audio, video, broadcast, electronic, and CD-ROM presentations. We look at these in more detail in Topic 6 (Other Media). Basically, there are many restrictions. You may have no choice about what you can or cannot use in your territory; or what you can and cannot sell; or what you can and cannot adapt. The costs of doing anything may be prohibitive.

You cannot change proprietary software, a CD-ROM, or a textbook; you can only use it 'as is'. And you must pay the going rate, although you may be able to negotiate a bulk purchase or copying agreement with the software or publishing house. If a textbook is a component of your distance learning course, then you will be governed by its rights, price, and distribution arrangements.

In other media, remember that you will need to seek permission from performers for broadcast material, and to clear copyright on even incidental music. As a producer, particularly if you want to sell your material, you should restrict your authors and developers to using only essential pedagogic material. You should approach all these areas with caution and seek expert advice.

Generally, if the medium of delivery changes, then all the copyright issues will need re-addressing.

Multiple copyrights

Say that you want to include a painting and an accompanying discussion in a print-based Fine Arts distance learning undergraduate course. How do you do this? You will need an actual photograph for reproduction in the printed material and the appropriate permissions. Under copyright law in the United Kingdom, for example, if the painter died more than 70 years ago, then the painting is in the public domain. If not, then you will need permission from the painter or the painter's estate. If the painting is owned privately, then you will need the permission of the owner; if the painting is on display in a gallery,

then you will need the permission of the gallery. You will also need the permission of the photographer. So you may have to seek permission from four interested parties.

Similarly, with photographs you may need the permission of the person who commissioned the photograph, the photographer, the owner of the negative, and, depending on national legislation, the subjects taken.

With many items that need third party copyright permission, there are multiple copyright owners. Use of any different media involves many owners as we see in Topic 6 (Other Media). Permission from each of them is required before you take any further action.

Activity 2.1: Copyright and Distance Education

Check your **national copyright legislation**:

- Are any particular approaches for face-to-face teaching specified?
- Are any different approaches for distance teaching specified?
- Are any details, such as use of copyright materials in setting and answering examination questions, specified?
- Do you have a national collecting agency that could license you to use materials under the national legislation?
- Is there a government body that can offer advice?
- Do you have specific content or academic requirements for your institution and the presentation of its courses?
- Do you have specific delivery requirements for your institution and the presentation of its courses?
- Do you have particular funding requirements that affect how your institution operates?

TOPIC 3

International Conventions and National Legislation

Key terms and issues

Berne Convention ~ Universal Copyright Convention ~ World Intellectual Property Organisation ~ UNESCO ~ principle of national treatment ~ Rome Convention ~ Geneva Convention ~ national schedules

Introduction

There are two major copyright conventions, the **Berne Convention** and the **Universal Copyright Convention** (UCC), the combined memberships of which include more than ninety countries. The **World Intellectual Property Organisation** (WIPO) mainly deals with problems of copyright infringement, particularly in video and audio recordings, and administers the Berne Convention. The **United Nations Educational, Scientific, and Cultural Organisation** (UNESCO) mainly administers the UCC because it also includes human rights issues.

Berne Convention

The Berne Convention is the older of the two copyright conventions. It was concluded in 1886 and since has gone through several revisions. Originally it was called the 'International Union for the Protection of Literary and Artistic Works'. The Berne Convention calls for minimum standards of protection for original works created in its member countries. In order to remain as members, countries must include these standards in their domestic laws.

The Berne Convention was set up by a group of international publishers meeting in Switzerland who were anxious about their works being translated and reprinted without permission. Their aim was to get all countries to sign the convention and agree to a minimum standard of protection for copyright holders of literary and artistic works. Several countries did not sign, including, significantly, the United States, which continued to use non-American published material within America without any regard for copyright. Other countries were not allowed to join as their legal systems functioned differently and they were not prepared to change.

The main benefit of the Berne Convention is that works originating in any member country are subject to the same protection in all other member countries. This is referred to as the **principle of national treatment**. In other words, an author from a member country would be given automatic copyright protection in all other member countries. Creators of original works do not have to apply for copyright protection in each country – they are simply granted it as citizens of a member country.

Universal Copyright Convention

In 1952, the Universal Copyright Convention (UCC) was created to bridge the gap between Berne Convention countries and non-member countries. The United States was the main original member and signatory. The former Soviet Union joined in 1973, and China joined in 1992. China was a particularly significant signatory given that the political dogma in China suggests that intellectual property is commonly owned.

Member countries must abide by the conditions of the UCC. However, these conditions are not as legally bound to domestic laws as those of the Berne Convention. Literary, scientific, and artistic works are included.

The UCC functions in the same way as the Berne Convention, but there is one main difference. In order to secure copyright protection for original works and to give copyright notice to others, UCC members must place three items on their original works before it is protected in all UCC countries:

- the copyright © symbol;
- the name of the owner of the work; and
- the date of publication of the original work.

Several countries are now members of both conventions; for example, effective from March 1, 1989, the United States signed the Berne Convention.

Both the Berne Convention and UCC were revised in Paris in 1971.

Rome and Geneva

In 1961, the Rome Convention addressed the needs of performers, broadcasters, and record producers. In 1971, the Geneva Convention detailed clauses concerning the unauthorised duplication of discs, cassettes, and compact discs.

National schedules

Your national legislative body will have its own set of laws that specify detailed schedules relating to copyright. These schedules will identify issues such as the terms of copyright, and what is allowed for individual and institutional educational use. You should contact your national legislature for more information.

Activity 3.1: International Conventions and National Legislation

Investigate the **UCC and Berne Conventions** and your **national copyright legislation**:

- What convention pertains in your country and in those countries with which you are dealing?
- How does this international convention affect your own national legislation?
- Are there any significant points that you should note in relation to your own national legislation?
- Are there any significant points that you should note in relation to your own institution?

TOPIC 4

Legal and Financial Aspects of Copyright

Key terms and issues

contract ~ offer ~ acceptance of offer ~ consideration ~ signatory ~ transfer of materials ~ direct sale ~ selling rights ~ assigning rights ~ permission to use ~ licensing ~ territory ~ payments and charges ~ fair dealing ~ educational use ~ substantial ~ code of practice ~ collecting agency ~ Reproduction Rights Organisation ~ International Federation of Reproduction Rights Organisations

Introduction

In this topic, we are primarily concerned with some specific legal and financial details that you will need to address in relation to distance education. This discussion will lead into Topic 5 (Institutional Implications and Procedures), where we look at some procedural aspects of copyright that help an institution manage these details effectively. Our main concern here is the drawing up and content of copyright **contracts**. These will determine the scope and usage of the learning materials you are preparing and the payments and charges involved. In your own environment, you may be able to get additional help through **educational use** allowances in your national copyright legislation and, procedurally, by payment to a **national collecting agency**.

Contracts

A contract is a tool to clarify a relationship at its inception and it will follow the basic rules of your national contract law. It can help to avoid conflict at later stages and should set out the terms and conditions of the arrangement in advance. It identifies each party's rights and obligations. A valid contract has three basic components:

- **offer**, to do or not do something; for example, to use a photograph, to copy an article, to use a course, to license a software program, or to write a course;
- **acceptance of the offer**, and
- **consideration**, which may be money or other remuneration, or a promise to supply goods, or to perform services.

All activities pertaining to the origination, use, or transfer of course materials and any of their components should be covered by a detailed contract, including:

- employment contracts for full- and part-time staff;
- writing and development contracts for authors and instructional designers;
- copyright clearance agreements for a table, figure, poem, piece of music, or painting;
- placement of material on an Intranet;
- proprietary software licences for staff and student use;
- sale or purchase of print, audio, video, and electronic materials;
- adaptation or translation of any material; and
- presentation of course materials in a different medium from the original.

Drawing up the contract

Any contract starts by identifying the parties by their legal names and addresses. It should then state the purpose of the contract and the rights and obligations of each party and the consideration or compensation. A number of general provisions that concern arbitration, applicable law, and bankruptcy should then follow. Discussion and negotiation of all clauses, with or without legal advice, should be carried out before signing. All parties should sign the document, and the **signatories** should be authorised officers with the name and position of the individual stated in the contract at the signature line. Signing should be witnessed.

All clauses should be discussed and mutually acceptable decisions reached before signing the contract, rather than arguing or having any misunderstandings after the event. Remember that the wording of these agreements is very important, and that everything involved in the preparation or transfer of courses should be written into a legal contract. It is necessary to be very specific about the terms.

A contract is valid only between the two parties who agree to it. Although contracts can be very simple, they are often written in legal jargon. As long as both parties understand the basic ideas, lawyers can draft the clauses in precise legal terms. However, if the expertise or finance is not available, lawyers are not essential to draft or review an agreement – common sense language is adequate or a model agreement can be used as a basis. For example, Exhibit A shows a pro forma for third party copyright clearance and Exhibit B shows some examples of contracts for the transfer of materials.

Transfer of materials

The transfer of materials is covered extensively *The Facilitation of the Transfer of Learning Materials Manual*, also published by The Commonwealth of Learning. We will not go into details here, but note that it is a tricky area and you should take care. Brief comments here give some basic guidelines for the transfer of materials.

A variety of arrangements are used for transferring materials and these depend on the materials themselves and on the particular circumstances of the parties involved. All arrangements require a contract that protects both the producers and the users of the material. Through this contract, producers can control the work they own or have created and users know exactly what they can use and how they may use it. Both parties know their responsibilities and the consideration involved. The laws of contract of the particular jurisdiction govern future behaviour; details of activities are specified within a legal jurisdiction but these also have international implications.

We can identify four simple forms of transfer arrangement. Although these are not mutually exclusive, nor representative of the whole range of possibilities, they do give some basic guidelines. With different media, the possibilities and difficulties increase. Within any particular course, a combination of arrangements might be required, for example:

- textbooks or videos provided as a direct sale of physical copies;
- study units provided as a direct sale of rights; and
- assignments provided under licence for one particular institutional presentation.

The producer may completely dictate any of the following arrangements, but some conditions may be negotiable depending on the user's requirements and resources:

- The simplest type of transfer is a **direct sale** of course materials as physical copies, usually with the producer providing no additional support. The user can use the material within normal copyright constraints; for example, no copying is allowed but students can use the material. A contract may not be required if each party's rights, responsibilities, and remuneration are subsumed into the actual sale process. By selling the copies, the producer has already undertaken the responsibility for ownership and third party copyright clearance in this environment or to this particular user. However, if physical copies are not supplied and the producer gives permission to copy from masters, say, then a contract is required. This becomes a different type of arrangement, which may or may not have the same complications as licensing, but there is no temporary or permanent transfer of rights.

- It is possible for a producer to **sell or assign the rights** of material in perpetuity; the user could then do what they like with the material as they now own it. A simple contractual arrangement would be required for the sale confirming assignment of the rights for some consideration. However, the producer is unlikely to do this. Any additional support is also unlikely.
- Another simple arrangement is **permission to use**, in which an institution allows its material to be used by another in some way, without charge, and possibly under some conditions, for example, in a particular institution or territory and for a defined period of time. This arrangement is likely to be covered by a simple agreement outlining the conditions and confirming that the producer owns the complete work. The producer may be able, under the terms of course development funding, for example, to provide the materials to users only in Commonwealth countries, to user institutions that are publicly funded, or to other members of a particular consortium.
- With **licensing** arrangements, a producer grants a licence to use the material for a specified period of time with certain obligations from the user. The licence could be exclusive in a particular country or region. The materials may be modified, adapted, re-formatted, or translated in some way, and it may be possible for the user to sell rights of these new materials to others. The contract needs to indicate the restrictions that both parties agree. However, the ownership of the rights to the original materials in all licensing arrangements remains with the producer; restricted rights are temporarily assigned to the user. Licensing arrangements are the most likely option for media other than print.

Territories

You may have contracts for use of materials that cover your own staff and students, or perhaps you identify them as being in particular localities. Perhaps you have different campuses, or you register students world-wide on a distance learning basis. Perhaps you envisage selling your materials as well as producing them for your own students, so you want to clear for onward sale in the Commonwealth or in the world-wide market. In all these cases, the contracts that concern the original and third party copyrights will need to specify exactly the extent of use or sale.

Other licences

Your institution probably holds blanket or site licences for some readily available software packages. Probably through the library or learning resources centre you may have access to specific databases or on-line journals for private study. These facilities could be extended to distance learners by remote access through an institution web site,

access to which is likely password protected. The contracts with all these suppliers will need to identify exactly what you and your students can do.

Payments and charges

Copyright holders can charge what they like for anything that you want to do with the material, although you may find that there are accepted practices in particular environments. These depend on:

- what the material is;
- who owns it;
- who else has rights to it;
- what you are going to use it for;
- how you are going to use it; and
- what protection you can offer for onward copying or misuse.

For clearance of third party material, payment is likely to be affected by:

- **territorial restrictions** – for example, staff and registered students, or one country, or Commonwealth countries, or world-wide;
- **type of media** – for example, print or on-line; and
- **source of material** – for example, from a ‘commercial’ publisher or another institution.

In the transfer of a complete course, the situation can be complicated. There may be an initial set-up fee, plus an annual administration fee, plus a fee per number of copies made or number of students enrolled. Perhaps study units or textbooks are purchased off-the-shelf. Payment for software licences is likely to be per number of copies made or per number of machine installations or as an extension of an existing site licence.

Even if you are distributing your student materials at no charge, you still need to obtain permission from the original copyright holders. The returns that you get from use of the material are unrelated to the ownership of it. **Money** and **permission** are not linked. You will probably be asked to pay for use, regardless of how or whether you are charging for it.

Fair dealing and educational use

In most national legislation, there is some allowance for using small amounts of copyright material without obtaining permission. For **research and private study**, these allowances may be quite extensive, for example, not more than one complete chapter of a book or five percent of the total whichever is the greater, and one article from a set of journal or conference proceedings. However, this **fair use** for **criticism and review** may not be clearly specified, but rather vaguely referred to as not more than a **substantial** part. Within your environment, a **code of practice** may indicate that extracts of say 400 words from a text, or a series of extracts totalling no more than 800 words is acceptable with appropriate acknowledgement. However, this is a code of practice and not the legal requirement. Generally speaking, all tables, charts, photographs, and substantial extracts of text must be cleared with the original copyright holder.

You need to check your own national legislation. Clarify the meaning of the word **substantial**, if it is used, as it has both quantitative and qualitative implications.

Collecting agencies

In addition to your national copyright legislative body, you may have a central **Reproduction Rights Organisation** (RRO). Examples include the Copyright Licensing Agency in the United Kingdom, the Copyright Agency Ltd. (CAL) in Australia, KOPIKEN in Kenya, and CANCOPY in Canada. These agencies act on behalf of the publishers of, for example, textbooks, periodicals, and learned societies, and authors within their own country. The number of RROs is growing and nearly all agencies are members of the **International Federation of Reproduction Rights Organisations** (IFRRO). You should be able to get some information from their respective web sites. Generally speaking, they have reciprocal agreements in other countries but primarily grant licences that allow users to photocopy material within their own countries.

Reproduction Rights Organisations have special significance for educational users, as they may grant licences to institutions for a certain amount of copying for sets of learning materials. If you are producing materials for your own face-to-face students, then you may be able to take advantage of a blanket licence. Or if you are producing learning materials for distance education, a limited amount of copying may be permissible. The institution would pay an annual fee to the RRO based on its enrolment. In addition, the RRO may undertake clearance of additional materials for individuals and institutions on payment of a fee, thus effectively collecting payment on behalf of copyright owners. Some published material may be withheld by the copyright holders from this system and will require special clearance.

You will probably also have a **national performing rights society** that collects money on behalf of performers, composers, and players of music. If you are including music, for example, in radio broadcasts as part of a distance learning course, then you will need a licence from this society and to pay appropriately. You may have other collecting agencies such as a **mechanical copyright protection society, authors' licensing and collecting society, design and artists' copyright society, newspaper licensing agency, and publishers' licensing society** that collect fees and issue licences on behalf of copyright owners.

If you transfer materials from one institution where use is permitted by national legislation, payment of a licence to a national collecting agency, or both, then none of these permissions will operate in your own environment.

Activity 4.1: Legal and Financial Aspects of Copyright

- Check with your institutional legal advisor on policies and all contracts.
- Check any **institutional** copyright clearance pro formas, employment and development contracts, and transfer of materials **contracts**.
- Check your **national copyright legislation** for details of fair dealing and educational use.
- Clarify the use of the word ‘substantial’ if it is used in your national copyright legislation.
- Check with your library or learning resource centre what is allowable in a distance learning context either as a consequence of the national legislation or as part of any licensing agreements held.
- Liase with your RRO and establish exactly what you can do under the blanket institution licence and under separate transactional licences.
- Check if you have any other national rights or other collecting agencies.

TOPIC 5

Institutional Implications and Procedures

Key terms and issues

employment contract ~ ownership of intellectual property ~ third party materials ~ institutional licences ~ institutional procedures ~ subsidiary rights ~ students

Introduction

In the last topic, we saw some of the legal and financial implications of copyright and the requirement for contracts in many diverse areas. As you can appreciate, the institution must protect itself from these implications by having sound and secure systems for setting up, monitoring, and coping with the financial problems that they involve. An institution needs precise policies and procedures to cover the activities of its administrative and academic staff and students.

The ownership issue for academics, instructors, and authors

If a writer is developing material for a producer, the terms of his or her contract must determine who ‘owns’ the final product – the intellectual property. An institution usually **owns intellectual property rights** as part of the terms of employment if the writer is a full-time member of staff. However, terms of employment may not be entirely clear-cut as the **employment contract** probably covers all patents, inventions, literary and artistic copyrights, trademarks, and designs, and “intellectual property” may not be sufficiently defined to include all situations in which copyright material may be used.

As well as a defined ownership policy, there may be an internal understanding or code of practice concerning academic endeavours. For example, an academic may receive some revenue and have some control over the licences from a patent or trademark developed within institution time and as well may use institution facilities but may not retain ownership of intellectual property. The institution probably uses this approach to encourage its research program. Rights to a textbook or a journal article that have not been written as part of an academic’s duties but during their working time are generally considered as residing with the individual not the institution. However, rights to courses that have been developed as part of an academic’s duties are definitely held by the institution, regardless of their components. The situation becomes more confusing when some of these components, for example, software or a textbook, are still in the

individual's ownership. In addition, academics may perceive that on-line courses that perhaps developed from lecture notes, recordings, or web sites also fall into the same category as patents and trademarks, especially if the material developed gradually, converting material written for campus students to suit those in distance education.

Institutions need to have very clear policies that include courses but that do not affect their normal practices and processes of research and publication. An institution may need to reimburse payments received for any onward transfer arrangements back to the faculties. Equally, academics need to be aware that relinquishing their rights to distance education courses that are developed as part of their employment does not compromise course content and academic freedom. Some academic staff associations view that academics should retain rights to their courses however they are taught – face-to-face, print, or on-line. You will need to clarify all institution policies and their enactment carefully.

All employment contracts need to be very specific. Other contracts with outside writers; course developers; instructional designers; video, audio, and software producers and suppliers; and anyone involved with course development for the institution should also be very specific. Ownership of the original material, its value, and the ownership of the final product need careful clarification.

Third party materials

It is the author's responsibility to identify the use of any third party copyright material in course materials. However, to administer clearance and payment properly, the institution probably needs to set up the appropriate procedures. Copyright holders require payments and information about where and how their material has been used. Funds need to be allocated to pay for usage. The extent of clearance should be determined as a matter of policy. The copyright pro forma in Exhibit A can be used as a basis for clearance. You should take particular care if the medium of course delivery is changed at any stage.

Licensing and contractual procedures

Likely, a number of institutional licences exist, including those with the national collecting agency for photocopying and with software houses for licensed use on- and off-campus. Licences for recording educational broadcast material from national television or from national open university-type broadcasts might also be in operation.

The library will hold database subscriptions and electronic journals subscriptions. With these, printing out is probably legal on an individual basis, but the material cannot be stored. Check with your librarian. You will need to know the details of individual contracts with suppliers. For example, permission may be given by a CD-ROM supplier to place the material in a database that could then be accessed remotely by distance learners through a modem.

Selling materials

If you want to sell any materials, then you have to ensure that you own them and are in a position to sell them. This particularly concerns ownership of the original material and appropriate permission from third party copyright holders. As we saw earlier, the transfer of materials is tricky and you need to take care. There are a number of ways of obtaining revenue by selling actual copies or the rights to reproduce. You could decide to go through the whole publishing process and physically sell off-the-shelf copies. This is obviously a major undertaking in terms of the logistics of production and economics of copyright clearance. However, you might decide to do it.

You could license another institution to use your materials under some contractual arrangement. As we saw earlier, you need to take care with the contract and each party's roles and responsibilities. Note particularly the length of the contract and the position of any third party copyright. Be careful about exactly what you are allowing the user to do and include appropriate restrictions in the contract. For example, indicate 'print reproduction right only', if that is what you are allowing. You may also be able to sell the subsidiary rights separately, for example, for translation, or for a particular territory, or for radio broadcast within a particular territory.

If you wish to sell any materials, you need to have a system to supply review copies. No one will consider buying without examining the material and probably passing it through their own academic review process. If you are licensing materials, then you may need to supply printing films, masters, and information about third party copyright holders. If you are selling adaptation rights then you need to supply an appropriate electronic version. *The Facilitation of the Transfer of Learning Materials Manual*, also published by The Commonwealth of Learning, will give you more detailed information on these complicated tasks.

Buying materials

When buying materials you need to consider the same issues as when selling materials. The producer cannot sell materials to you if they do not own them. Again the contract is important in identifying roles and responsibilities of each party and should include arbitration and termination clauses. You will need:

- **information** on courses from producers;
- **review copies** from producers;
- **institutional procedures** for contractual negotiations with producers;
- **internal processes** for academic and instructional design review of courses; and
- **development processes** for adapting, printing, clearing any additional rights, and finally distributing the materials to students.

Note there may be **subsidiary rights** for adaptation, translation, or other media that you will need to negotiate, as well as the main print rights.

Students

Your registry will need to make sure that details about registered students are kept accurately. You may have permission to use material only for registered students. Use of software and other licences is likely to be based on restricted access to registered students. Students are likely to have password access to on-line courses, or electronic journals and databases. In addition, student enrolment figures may be used as a basis for payment for third party copyright clearance and licences to use any other material.

Note also that you need to protect student information if you are encouraging e-mail and computer conferencing facilities.

The copyright of materials, including cases, assignment answers, and articles that are produced by students in the course of their studies, needs to be clear. The institution should have ownership, which is assigned on initial registration. For example, the economic rights of a student case study are vested in the institution, which could then use it elsewhere for monetary gain. However, the moral rights are still vested with the student and the institution may not take any of this material and present it or change it or not attribute it as this will infringe the student's moral right.

Activity 5.1: Institutional Implications and Procedures

- Check your **institution's intellectual property policy**.
- Check the **employment contracts for all teaching and writing staff** and ensure that the intellectual property policy is enacted.
- Check what **licences** are paid for by the institution, when, and what is allowed under their terms.
- Check your institutional systems for copyright clearances, acknowledgements and payments. Appropriate records must be kept in the event of any problems or dispute, or any onward changes, for example, change of media or transfer of material.
- Check the procedures for buying and selling materials in a transfer arrangement.
- Check the procedures for all contractual arrangements involving materials: print, audio, video, electronic, software, databases, on-line journals, and so on.
- Check **student registration documentation** for use of teaching materials, protection of data, and use of student materials generated as part of their studies.

TOPIC 6

Other Media

Key terms and issues

audio ~ visual ~ audio-visual ~ electronic ~ multimedia ~ Internet ~ broadcast ~ software
~ CD-ROM ~ on-line courses ~ web sites ~ hyperlinks ~ home pages ~ digital licensing
~ passwords ~ databases

Introduction

National copyright legislation usually allows copyright owners to copy, adapt, publish, perform, and broadcast their works. We can break this down into delivery via six basic media: audio, visual, audio-visual, electronic, multimedia, and the Internet and web sites:

- **Audio** – someone reads a complete novel onto an audio-tape for delivery to students as part of a literature course. The right to this **talking book** is called ‘single voice reading’. A shortened version would also need the right for adaptation. Dramatisation with different actors taking different parts would also be a separate right.
- **Visual** – use of paintings or illustrations in another context, for example, posters or film strips.
- **Audio-visual** – video rights include those of dramatisation, actors’ and musicians’ performances, composer, and so on, beyond those of the content of the original work.
- **Electronic** – electronic **book rights** concern the holding of a complete text of a work electronically, for example, in a database, or distributed as a CD-ROM, or on-line. Electronic **version rights** concern use of parts of the material in another product; for example, in an interactive CD-ROM.
- **Multimedia** – Interactive CD-ROMs and on-line programs can be created using many different rights. These might include the software program to create the product, text on screen prepared by a team of writers, the same text read by actors, graphics and artwork, photographs, works of art, musical extracts, and video clips. Any item may have more than one copyright holder.
- **The Internet and web sites** – the same comments apply as for multimedia. Note that just because the information is readily accessible, it is not in the public domain, unless expressly stated as such. We look at this issue later in the topic.

Audio, video, broadcast, and performing rights

With audio-visual material there may be specific instructions in the national legislation, allowing certain kinds of broadcast, copying, and distributing a number of copies, and indicating how long these copies can be used.

Perhaps you want to use the complete video of a play in a literary course, or put together clips in a CD-ROM compilation. You will need to clear and pay for many rights, primarily in two groups:

- creators (content and intellectual property); and
- performers (dramatic, musical, or recorded).

When making a video, the rights to be cleared and paid for might include:

- original author or publisher of the work;
- screenplay writer for this particular version;
- television or video company;
- actors, producer, and director;
- composer, conductor, and musicians of any music; and
- filming location for the video.

Software

Your national legislation may specifically include software programs. But generally, you cannot change proprietary software; you just use it 'as is'. As well, it is illegal to copy without a licence, although it is possible to download some common software packages from the Internet. Many suppliers have special licensing arrangements for educational use, for example, through site licences and many suppliers actively encourage institutions to use their products so that students become proficient in them. It is worthwhile doing some hard negotiating.

Electronic: CD-ROM, on-line courses, the Internet, and web sites

Digitised information has a number of different features from other media, which cause additional copyright problems for originators and users. Digitised information is:

- easily manipulated once it has been scanned or digitised;
- transient – the data on screen cannot be touched or handled;
- hard to count – repeated access by different users on a network is hard to quantify;
- transnational – data is not affected by any territorial controls;
- transactional controls are hard to apply. How do you define a transaction? Is it accessing? Downloading? Placing in a database? Putting on a network? Printing out? All of these?
- end use or user is unrecognisable – it is often hard to quantify where the materials end up and in whose hands.

Licences to make copies from national collecting agencies do not normally extend to making electronic copies, printing out electronic copies, or storage in electronic form. However, in 1999 the Copyright Agency Ltd. (CAL) in the United Kingdom brought in transactional licences to digitise existing print materials; other agencies may follow. The Australian federal government is drafting new 'Digital Agenda Copyright' legislation. Fair dealing provisions for photocopying equally do not apply. National library privileges allowing copying of single copies for personal use also do not apply.

There has been much discussion in academic circles about who owns on-line courses and materials. You need to make sure that ownership is specified in the employment contract. As more and more 'conferences' and research are conducted on-line, the material is then actually not published in a conventional sense and individuals may perceive that they own articles or material used from an on-line conference. Problems of ownership may also arise with the development of an individual's web site, especially if an interactive situation is created with students, and computer conferencing has generated discussions that are used in another environment.

Internet

The key issue to remember is that copyright still pertains even though the information is readily available. Just because something is on the Internet does not mean that you can just download it and print it out. Electronic copying needs the permission of the copyright holder or a licence to use in the same way as paper copying. The World Wide Web is

subject to copyright and the web pages themselves are literary works. The textual articles contained on web pages are also separate literary works, the graphics are artistic works, and any sound files are recordings of separate musical works. In a single web site, many different rights may need to be cleared before you can copy it. The web site itself may give information about what copying is permissible. If not, then you should contact the web site directly by e-mail.

Can you **hyperlink** to other sites in your course materials? By including a hyperlink, you are not actually copying but you may be indicating to the user that they can copy from the hyperlinked site, which may or may not be happy with copying. If the new site is not the **home page**, it will appear as though it is part of your own site. Even though no copy is actually made, the result comes close to theft. Most national laws are unclear; however, whatever the legislation, common courtesy is still the best option. If you are including hyperlinks, then check with the web page via e-mail.

Digital licensing is likely to involve the use of, say, a photograph in a web site or an on-line course. Or it might be a complete course or article for on-line delivery in a specific way. Or it might involve the right to digitise material and use it in a variety of ways for onward transmission to students, perhaps through a third party like a CD-ROM producer. Generally speaking, permission for electronic presentation may be more likely if you protect access with a **password** system.

Libraries and databases

You may find that databases are now specifically covered in your national legislation, but infringement of database copyright does not occur just by normal access and use. Database legislation extends the normal protection of the work through the unique database itself and the compilation.

Discuss copyright with your librarian or learning resources centre manager. They may be implicated in any copyright decisions and certainly in how academic staff develop face-to-face and distance courses. They will also be involved in monitoring fair use provision. Further, they may be the repository and guardians of use for CD-ROMs, the managers of databases, the purchasers of electronic journals, and administrators of modem access for distance learning students. You need to know exactly what facilities the library and librarian can offer for on- and off-campus students.

Activity 6.1: Other Media

Check your **national copyright legislation**:

- Are there specific details about broadcast material and performances for education?
- Are computer programs specified?
- Are databases specified?

Check with your **librarian** or **learning resources centre manager**:

- What resources are available and how does the student access them at a distance?
- How is this use monitored?
- What does the librarian allow under national legislation for all media?
- What does the librarian allow under any licence arrangements, for example, the national collecting agency or specific databases?
- Are inter-library facilities available for distance students?

Exhibit A

Third Party Copyright Pro Forma

Contact your national copyright office for details of legislation; it may also have samples of request forms. We have restricted the following pro forma to print materials. If you want to use it for other media, for example, audio, video or electronic materials, then you will need to change the details. In principle, you follow the same guidelines in identifying what material is to be used, where it comes from, and how it is to be used.

Note the following points:

- You will probably receive the copyright holder's standard form in response; check the clauses. Details of payment terms and conditions will be specified, and payment is likely to be due on publication or presentation date.
- Set up a system that ensures timely payment is made, and on a recurring basis if it is on a per copy, per capita, or per presentation basis.
- An invoice may be required for each transaction; check with your finance department.
- Payment may need to be made to the copyright holder in local currency.
- If permission is denied, then you will need to rewrite to accommodate deleting the material.
- If one copyright holder restricts permission for an essential item, for example, within an anthology, then you need to revise the permission for all other items in the anthology to match; otherwise you will pay for rights that you cannot use.
- You need to record all details for any future use or transfer of material.

Permission to Reprint

To:

Publisher, author, copyright holder

Address:

Address, and contact person details if available

Permission is requested to reproduce in print form:

Article, chapter, picture, table, and all details of where previously published including author, publisher, ISBN, ISSN, volume and issue number, edition, publication date, numbers of pages.

If permission to reproduce a large percentage of material from a single publication is requested, then it is likely that permission will be denied.

Title of publication:

Title of course, and course component for which clearance is requested (for example, SS103: Social Science Foundation), study unit, or course reader.

Previously published as:

If this is re-clearance following a transfer arrangement, where, how, and under what name the work was previously used should be included.

Language:

English, other language, or the language of translation.

Publisher:

The user or producer institution, or if materials are produced through a separate body, this body.

Nature of course of study:

It should be indicated that it is part of a set of distance education learning materials that is given to students as part of their course fee, or sold back to them, or whatever the particular arrangement is. For example, a course reader might be sold back to students. Restrictions here may facilitate permission and reduce costs but will restrict onward use.

Rights required:

For example, for staff and registered students only, country, region, Commonwealth countries or world-wide. Permission will be cheaper and easier with more restrictions but final materials will be similarly restricted in use.

Proposed publication or presentation date:

A copyright holder may give permission, but with the condition, for example, that permission has lapsed if publication is not within two years of this date.

Number of copies required:

If applying for restricted rights, the cost may also be reduced by specifying the number of copies that are expected to be printed or used over the course's life or on a per presentation basis. This may reduce costs but will increase the administration required to keep permission and payments up-to-date.

Acknowledgement required:

The copyright holder will probably want to have precise wording in the acknowledgements section, or alongside the printed item.

Cost of permission:

The copyright holder will indicate the terms of permission and payment. If restricted 'staff and students only' rights are requested, and the material is given as part of the student's set of learning materials, then special consideration may be given.

Please countersign and return the enclosed copy of this agreement. We would appreciate your reply as soon as possible. If you are not the copyright holder, please forward this request or provide details of the appropriate contacts.

Signature:

Name:

Title:

Signature:

Name:

Title:

For and on behalf of the copyright holder:

Signature:

Name:

Title:

Date:

Exhibit B

Sample Contracts for Transfer Arrangements

EXAMPLE 1

LETTER OF AGREEMENT

BETWEEN: [PRODUCER]

AND:

THE COMMONWEALTH OF LEARNING
1285 West Broadway, Suite 600
Vancouver, B.C. V6H 3X8

WHEREAS The Commonwealth of Learning (COL) wishes to make educational materials (herein defined as courses) available to [USER];

WHEREAS [PRODUCER] owns copyright in courses it has developed;

NOW, therefore in consideration of the mutual terms and conditions, undertakings and payments herein contained and provided for, the parties hereby agree as follows:

TERMS AND CONDITIONS:

1. LICENCE

COL agrees to license each course (per Appendix 'A' and Appendix 'B') in perpetuity for use by the [USER], provided the total number of students at participating institutions other than at [USER1] does not exceed 100 per course per year.

2. DEFINITION

A course, for the purposes of this agreement, shall be a specific version or edition. A rewritten or significantly updated version shall be regarded as a different course.

3. ACKNOWLEDGEMENTS

For all **[PRODUCER]** courses used by the **[USER]** and listed at Appendix 'A' and Appendix 'B', the name "**[PRODUCER]**" and the logo of the College should appear on the front cover of the course materials, and appropriate credit for authorship shall be provided in the acknowledgements section of the course materials.

4. ANNUAL REPORT

The **[USER]** involved shall make available, through The Commonwealth of Learning, a report on the use of each of the courses listed at Appendix 'A', including the numbers of students registering for each course.

5. TERM OF AGREEMENT

This agreement is valid starting <MONTH, DAY, YEAR>.

6. COPYRIGHT ISSUES

Course materials which contain material for which the copyright is held by institutions other than **[PRODUCER]** shall be made available for student reference only, and it shall be the responsibility of **[PRODUCER]** to advise The Commonwealth of Learning about the materials affected by this. COL will then advise **[USER]** appropriately.

7. PRODUCTION OF MATERIALS

One set of the course materials will be provided on diskette and in hard copy form and the community colleges involved shall be able to adapt the materials and reproduce the appropriate numbers (as per paragraph 1. above) to meet local needs. In addition to course materials, a copy of the tutor manual, tests, marking keys, etc. shall also be provided.

8. PAYMENT

COL agrees to pay **[PRODUCER]** <AMOUNT PER PERIOD OF TIME> for courses already licensed since 1990, payable on the signing of the agreement by both parties. Payments for new courses may be made in instalments of <AMOUNT PER PERIOD OF TIME>. Rights to use versions of courses with a development date of 1990 or earlier, or that **[PRODUCER]** are no longer offering, shall be provided gratis (listed at Appendix 'B').

9. ADAPTATION

[PRODUCER] shall retain the copyright on all adapted courses and shall be supplied with a copy of the adapted materials. Adapted materials shall contain the acknowledgement of **[PRODUCER]** listed at paragraph 3. above.

10. SPECIFIC CONDITION

The agreement, and all of its conditions, shall apply solely and exclusively to course materials to be made available for use by [USER]. There shall be no resale or reproduction of materials carried out on behalf of any other party or at any other geographical location.

AUTHORISED SIGNATORY OF:

THE COMMONWEALTH OF LEARNING

[PRODUCER]

Head
Administration & Finance
The Commonwealth of Learning

Director
College Development & Physical Resources
[PRODUCER]

Date

Date

Director, Asian Programmes,
Materials and Education for All
The Commonwealth of Learning

Principal
[PRODUCER]

Date

Date

APPENDIX 'A'

(of the Letter of Agreement)

This is Appendix 'A' to the Agreement between The Commonwealth of Learning and **[PRODUCER]** College, dated <MONTH, DAY, YEAR>, to reproduce the following **[PRODUCER]** courses for the **[USER]**, the rights period for such reproduction being indefinite with effect from <MONTH, DAY, YEAR>:

LEARNING

RESOURCES

FEE OUTSTANDING

BIP 085 Introduction to Computers	\$750 per course
BIP 099 Introductory Keyboarding (formerly Introduction to Typing)	\$500 per course
BIP 110 MS-DOS Concepts (formerly BIP 140)	\$750 per course
BKK 160 Introductory Bookkeeping	\$500 per course
BKK 164 Microcomputer Bookkeeping	\$500 per course
BOA 070 Better Spelling	\$750 per course
BOA 106 Office Communications (formerly BOA 100)	\$500 per course

BOA 130
Records Management
(formerly SEC 130)

\$500 per course

ENG 032
Intermediate Writing Skills

\$500 per course

AUTHORISED SIGNATORY OF:

THE COMMONWEALTH OF LEARNING

[PRODUCER]

Per: _____

Per: _____

Title: _____

Title: _____

Date: _____

Date: _____

APPENDIX 'B'

(of the Letter of Agreement)

This is Appendix 'B' to the Agreement between The Commonwealth of Learning and **[PRODUCER]**, dated <MONTH, DAY, YEAR>, which contains a list of course materials for which no copyright charge is to be levied by **[PRODUCER]** for use of these materials by **[USER]**:

LEARNING RESOURCES

1. Courses no longer offered by **[PRODUCER]**:

Introductory Typing
Intermediate Typing
Advanced Typing
Pitman Shorthand

2. Courses with a development date of 1990 or earlier:

BIP 120, Introduction to WordPerfect
BIP 130, Introduction to dBase III+
BIP 140, Lotus 1-2-3 Applications
BOA 141, Business Calculating Machines and Mathematics
BOA 143, Written Business Communications

AUTHORISED SIGNATORY OF:

THE COMMONWEALTH OF LEARNING

[PRODUCER]

Per: _____

Per: _____

Title: _____

Title: _____

Date: _____

Date: _____

Example 2
Letter of Agreement

BETWEEN:

[PRODUCER]

AND:

The Commonwealth of Learning
1285 West Broadway, Suite 600
Vancouver, B.C.
V6H 3X8

WHEREAS The Commonwealth of Learning (COL) wishes to make educational materials available to Commonwealth Nations mutually agreed to between COL and the [PRODUCER], and listed at Appendix 'B';

WHEREAS the [PRODUCER] owns copyright in materials, known as the [NAME OF SERIES], it has developed;

NOW, therefore in consideration of the mutual terms and conditions, undertakings and payments herein contained and provided for, the parties agree as follows;

TERMS AND CONDITIONS

1. LICENSE

COL agrees to license each module (per Appendix 'A') for a [PERIOD OF TIME] for use by public educational institutions in Commonwealth countries (per Appendix 'B') mutually agreed to by COL and the [PRODUCER].

The [PRODUCER] will provide COL with both a Master and Make-Ready copy of all the modules purchased under the terms of this site license. This will provide COL with copyright reprint authority for the modules for a [PERIOD OF TIME] with effect from [MONTH, DAY, YEAR].

2. UPDATES

The [PRODUCER] will provide updates at no additional costs for a [PERIOD OF TIME] from the date of the purchase of the site license for any specific module. Updates required after [PERIOD OF TIME] from date of purchase may be made available at a cost to be negotiated at the time.

3. OWNERSHIP

All materials covered under the terms of this agreement remain the property of the [PRODUCER]. Changes, modifications, additions or deletions are strictly prohibited without the express written permission of the [PRODUCER].

4. LIABILITY

The materials will be supplied by the [PRODUCER] on an "as is" basis, without any guarantee/warranties of any kind whatsoever. The [PRODUCER] shall not be liable to COL for any damage or loss resulting from the use of the materials (as listed in Appendix 'A') however caused or howsoever arising.

5. REPORT OF USAGE

COL agrees to provide the [PRODUCER] with an annual report on institutions using the modules and the enrolments at these institutions.

6. PAYMENT

COL agrees to make a payment of [AMOUNT] per year, payable before [MONTH, DAY, YEAR], as the license fee for the right to utilise and reproduce the materials on a multinational basis, for a [PERIOD OF TIME] with effect from [MONTH, DAY, YEAR].

7. TERMINATION

Both parties may terminate the agreement of the license of the [NAME OF SERIES] by providing written notice, such notice to take effect [PERIOD OF TIME] from receipt of notice by the second party.

THE COMMONWEALTH OF LEARNING

[PRODUCER]

Head, Administration and Finance
The Commonwealth of Learning

International Director
[PRODUCER]

Date

Date

Director, Asian Programmes, Materials
and Education for All
The Commonwealth of Learning

Marketing Manager
[PRODUCER]

Date

Date

APPENDIX "A"

This is Appendix "A" to the Agreement between The Commonwealth of Learning and [PRODUCER], dated [MONTH, DAY, YEAR].

LIST OF MODULES

APPENDIX "B"

This is Appendix "B" to the Agreement between The Commonwealth of Learning and the [PRODUCER], dated [MONTH, DAY, YEAR].

PUBLIC EDUCATIONAL INSTITUTIONS IN COMMONWEALTH COUNTRIES

1. Antigua & Barbuda
2. Bahamas
3. Bangladesh
4. Barbados
5. Belize
6. Botswana
7. Brunei Darussalam
8. Cyprus
9. Dominica
10. The Gambia
11. Ghana
12. Grenada
13. Guyana
14. India
15. Jamaica
16. Kenya
17. Kiribati
18. Lesotho
19. Malawi
20. Maldives
21. Malta
22. Mauritius
23. Namibia
24. Nauru
25. Nigeria
26. Pakistan
27. Papua New Guinea
28. St. Kitts & Nevis
29. St. Lucia
30. St. Vincent & Grenadines
31. Seychelles
32. Sierra Leone
33. Solomon Islands
34. South Africa
35. Sri Lanka
36. Swaziland
37. Tanzania
38. Tonga
39. Trinidad & Tobago
40. Tuvalu
41. Uganda
42. Vanuatu
43. Western Samoa
44. Zambia
45. Zimbabwe

Exhibit C

Overheads or Handouts and Activities

Topic 1: The Basics of Copyright

- **intellectual property**

the basic material of works of the mind in any form, protected by copyright, trademark, or patent legislation

- **copyright**

right to copy, broadcast, adapt, perform, or publish a work, or authorise others to do so

- **economic rights**

the value of a creator's work for which copyright is the trading system for intellectual property.

They can be:

licensed

assigned

reserved

- **moral rights**

paternity – right to be identified as author

integrity – right to object to derogatory treatment

false attribution – right not to have a work

wrongly ascribed

Activity 1.1: The Basics

Investigate precise details of your **national copyright legislation**:

- How are literary, artistic, musical, and dramatic forms of copyright identified?
- Are computer programs and databases included in the legislation?
- Are economic and moral rights identified?
- Which moral rights are identified?
- What are the various terms of copyright protection for different types of work?
- What international convention is your country following?
- Can you envisage any particular problems that might be encountered in your environment?
- What are the latest developments in this area?

Topic 2: Copyright and Distance Education

- **fair use, fair dealing or educational use**

As used in national copyright legislation, fair use may mean that single copies can be made for research and private study; consequently this allowance in copyright legislation is of little use in distance learning as you cannot expect your students to go to a library and make a copy of a particular article, say, for their own study.

- **original material**

libel

obscenity

blasphemy

negligent mis-statement

other liabilities

- **plagiarism**

using copyright material and passing it off as your own

- **author's warranty**

as an institution, you may still be liable

- **third party copyright**
transferring material
media
multiple copyrights

Activity 2.1: Copyright and Distance Education

Check your **national copyright legislation**:

- Are any particular approaches for face-to-face teaching specified?
- Are any different approaches for distance teaching specified?
- Are any details, such as use of copyright materials in setting and answering examination questions, specified?
- Do you have a national collecting agency that could license you to use materials under the national legislation?
- Is there a government body that can offer advice?
- Do you have specific content or academic requirements for your institution and the presentation of its courses?
- Do you have specific delivery requirements for your institution and the presentation of its courses?
- Do you have particular funding requirements that affect how your institution operates?

Topic 3: International Conventions and National Legislation

- **conventions**

Berne Convention (1886): gives rights across member countries for a creator to control copyright in his or her work. Standards must be included in domestic laws.

Universal Copyright Convention (1952): gives rights across member countries for a creator to control copyright in his or her work. Work must carry a copyright notice to be protected.

Rome Convention (1961): protects the rights of performers, broadcasters, and record producers

Geneva Convention (1971): covers unauthorised duplication of discs, CD-ROMs, and cassettes

Activity 3.1: International Conventions and National Legislation

Investigate the **UCC and Berne Conventions** and your **national copyright legislation**:

- What convention pertains in your country and in those countries with which you are dealing?
- How does this international convention affect your own national legislation?
- Are there any significant points that you should note in relation to your own national legislation?
- Are there any significant points that you should note in relation to your own institution?

Topic 4: Legal and Financial Aspects of Copyright

- **contracts**

 - required for all activities involved in preparing and presenting courses

- **transfer of material**

 - direct sale

 - selling and assigning rights

 - permission to use

 - licensing

- **collecting agencies**

 - reproduction rights organisation

 - national performing rights society

 - mechanical copyright protection society

 - authors' licensing and collecting society

 - design and artists' copyright society

 - newspaper licensing agency

 - publishers' licensing society

Activity 4.1: Legal and Financial Aspects of Copyright

- Check with your institutional legal advisor on policies and all contracts.
- Check any **institutional** copyright clearance pro formas, employment and development contracts, and transfer of materials **contracts**.
- Check your **national copyright legislation** for details of fair dealing and educational use.
- Clarify the use of the word ‘substantial’ if it is used in your national copyright legislation.
- Check with your library or learning resource centre what is allowable in a distance learning context either as a consequence of the national legislation or as part of any licensing agreements held.
- Liase with your RRO and establish exactly what you can do under the blanket institution licence and under separate transactional licences.
- Check if you have any other national rights or other collecting agencies.

Topic 5: Institutional Implications and Procedures

- **establishing ownership**
 - original materials
 - third party materials
- **institutional procedures**
 - contracts
 - original materials
 - third party materials
 - licences
 - selling materials
 - buying materials
 - students

Activity 5.1: Institutional Implications and Procedures

- Check your **institution's intellectual property policy**.
- Check the **employment contracts for all teaching and writing staff** and ensure that the intellectual property policy is enacted.
- Check what **licences** are paid for by the institution, when, and what is allowed under their terms.
- Check your institutional systems for copyright clearances, acknowledgements and payments. Appropriate records must be kept in the event of any problems or dispute, or any onward changes, for example, change of media or transfer of material.
- Check the procedures for buying and selling materials in a transfer arrangement.
- Check the procedures for all contractual arrangements involving materials: print, audio, video, electronic, software, databases, on-line journals, and so on.
- Check **student registration documentation** for use of teaching materials, protection of data, and use of student materials generated as part of their studies.

Topic 6: Other Media

- **other media**

 - audio

 - visual

 - audio-visual

 - electronic

 - multimedia

 - the Internet and web sites

- **electronic**

 - CD-ROM

 - on-line courses

 - the Internet

 - web sites

- **copyright in the digital environment**

 - many of the same rules apply as for print material

 - freely available does not mean that the material is free

 - many different rights owners need to be identified

 - permission is required from creators and performers

Activity 6.1: Other Media

Check your **national copyright legislation**:

- Are there specific details about broadcast material and performances for education?
- Are computer programs specified?
- Are databases specified?

Check with your **librarian** or **learning resources centre manager**:

- What resources are available and how does the student access them at a distance?
- How is this use monitored?
- What does the librarian allow under national legislation for all media?
- What does the librarian allow under any licence arrangements, for example, the national collecting agency or specific databases?
- Are inter-library facilities available for distance students?