

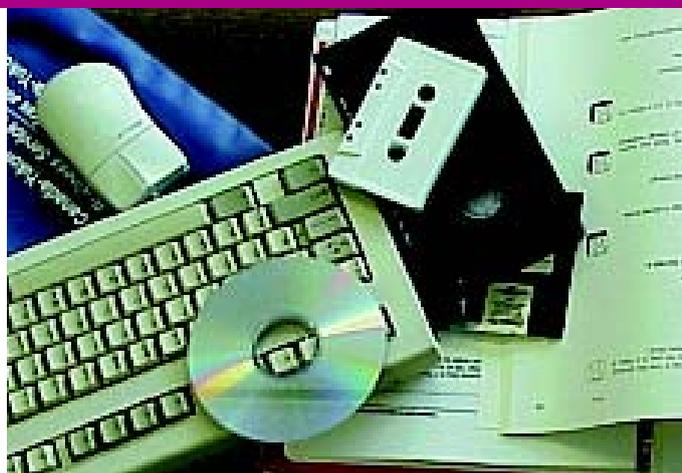


## Establishing Copyright Procedure in Distance Education

KNOWLEDGE SERIES

In distance education teaching materials delivered to the student are often copied, so copyright laws must be followed.

Establishing copyright procedure in distance education is not just about filling in forms for use of third party materials. It involves integrating resources, systems, contracts, procedures and information across a number of departments—even if there is a designated copyright officer.



## INTRODUCTION TO COPYRIGHT

In distance education (DE), copyright procedures must be established for any activity that concerns materials. This involves integrating resources, systems, contracts, procedures and information across a number of departments—finance, personnel, student registration, library, legal, publishing and educational technology – even if there is a designated copyright officer to deal with the third party clearances required in materials development.

### WHAT IS COPYRIGHT?

Copyright is the right to control the use of one's own work. Creators or owners of materials can give, sell or license this right to others, but it is illegal for others to use this original material without their consent.

Copyright law, which is part of a country's legislation, protects the user of material by identifying the conditions of its legal use.

### DEFINITIONS, CONDITIONS AND TERMS

*Intellectual property* (IP) is any "work of the mind" belonging to the original creator. IP is protected by national trademark and patent legislation.

For *copyright protection* to be granted:

- The work must be *original*
- The work must be *fixed*, that is, presented in a tangible form such as writing, film, photography or sound
- A qualified person living in a member country of the 1952 Universal Copyright Convention (UCC), or the 1886 Berne Convention, must create the work. The *principal of national treatment* means that an author from a member country is given automatic copyright protection in all other member countries. With the UCC, the work has to carry a copyright symbol, the name of the holder and the publication year to be protected. The United Nations Educational, Scientific and Cultural Organization (UNESCO) administers the UCC, and the Berne Convention administers the World Intellectual Property Organization (WIPO).

Normally copyright lasts for a finite term specified by national legislation. When this expires the works enter the *public domain*, which means that anyone can use them however they like. However, public access to material does not necessarily mean it is in the public domain.

In many countries, copyright is an *economic or property right*; additionally, it is a *moral right* that concerns the reputation or professional standing of the creator.

### ECONOMIC RIGHTS

These can be:

- **Licensed:** the creator allows long term, specific use of the material but retains copyright. For example, one university may allow another to present a particular course in a particular environment, on payment of a per student fee, for five years.
- **Assigned:** the creator gives the rights of the work in perpetuity to the new copyright owner, with or without remuneration. For example, a university or an academic writer could assign the rights of a particular course to another university for a one-time payment.
- **Reserved:** the creator withholds certain rights from assigning or licensing. For example, a university may license the print rights to a course, but not the online rights.

### MORAL RIGHTS

The following moral rights always remain with the creator:

- **Paternity:** the right to be identified as the creator of the work
- **Integrity:** the right not to have the work altered, presented in an unsuitable context, or treated in a "derogatory" way
- **False attribution:** the right not to have the work wrongly attributed.

## RELEVANCE IN DISTANCE EDUCATION

Copyright is particularly significant in DE; teaching materials delivered to the student are often copied, so copyright laws must be followed.

While the widespread use of technology and the Internet enables easy distribution of materials for DE, and should be encouraged where possible, it can also restrict use. Some copyright holders will not allow their works to be used online, as electronic materials can be more easily changed and are less easily identified.

Additionally, some copyright holders may charge prohibitively high prices for rights. Academics need to be aware of these issues, and that in some cases the material may have to be revised for their specific purpose.

### NATIONAL LEGISLATION AND EDUCATION

Contact your national legislative body to find out what international convention your country, and the countries you deal with, follow.

Concerning DE, some national copyright laws allow:

- Simultaneous broadcast of 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 non-campus locations)

- Copying of a certain amount of copyrighted material, if a blanket payment is made through national collecting agencies
- Use of copyrighted material in setting and answering examination questions
- “Display” and “performance” in an educational setting, which may extend to a distance learning environment through, for example, closed circuit broadcast, or transmission on a protected Intranet.

Your country’s copyright legislation may spell out *fair use*, *fair dealing* or *educational use* of certain materials in an educational context, and for small amounts of copyrighted material to be used without obtaining permission.

## CONTRACTS

A contract identifies each party’s rights and obligations, following the national contract law of your country. Institutional contracts determine the scope and usage of the materials you are presenting, originating, buying or selling, and list the payments involved. Keep records of all contracts.

### CONTRACTS AND COURSE MATERIALS

Situations covered by a contract:

- Employment for full and part-time staff
- External consulting for authors, instructional designers, graphic designers, interactive designers
- Copyright clearance agreements for a table, figure, poem, piece of music, painting
- Using material on an Intranet, or for Internet access through a website
- Proprietary software licenses for staff and student use
- Use of library databases and digitised electronic resources
- Sale or purchase of print, audio, video and electronic materials
- Adaptation or translation of material
- Presentation of course materials in a different medium from the original.

## ACQUIRING COURSE COMPONENTS

**Direct sale of material:** Physical copies are sold and used within normal copyright constraints, for example, no copying may be allowed but students can use the material.

**Selling or assigning rights in perpetuity:** the user can do what they like with the material.

**Permission to use:** material can be used in a particular way without charge, and with conditions.

**Licensing:** the material can be used for a specified period of time, with conditions.

### OTHER INSTITUTIONAL LICENSES

Blanket licenses can be obtained for some readily available software packages. An institution’s library or learning resources centre will likely have access to

specific databases and online journals, and license agreements for electronic resources. Distance learning students usually access these resources as “authorised off-site users” in a license agreement, which may include the right to download or print material. This access is likely to be password protected, and the contract with each supplier of material must identify exactly what you and your students can do with it.

## DEVELOPING IN-HOUSE MATERIALS

Your institution needs to ensure that it owns, or has permission to use, all the material it is delivering to its students, or selling or licensing to another party.

### IP AND ORIGINAL MATERIAL

You can develop course materials using your own staff, or through hiring an outside developer that writes under contract and assigns copyright to the institution on receiving payment. The terms of employment need to be clear that anything created within or on behalf of the institution belongs to the institution, including electronic materials created in an online environment. Otherwise, the developer will presume to own the IP rights to the created material. Terms must also specify that all developed material is original. Some universities allow authors to reuse materials from conference papers and textbooks, but this should be spelt out.

### THIRD PARTY MATERIAL

If course materials include anything from another source, for example a table, map or diagram from a book, an excerpt from a play, poem or magazine, an extract from a student’s assignment or anything obtained from the Internet, permission needs to be sought from the original copyright holder of this material (the third party).

### CLEARING RIGHTS

Unless you are seeking *worldwide rights* for reproduction, resale and media, you will probably negotiate some kind of *restricted rights* that allow, for example:

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

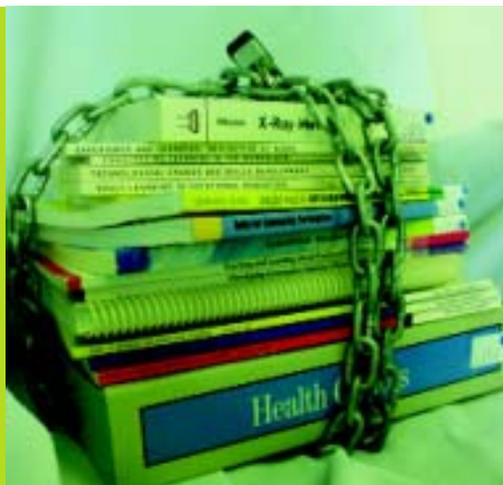
Generally speaking, the wider the clearance of rights (geographically or including many/all forms of reproduction), the higher the costs. Any third party copyright will also have restrictions and charges. For example, say you want to use a five-minute video clip in a 150-hour online course; numerous rights holders even for this relatively short clip will all need to be paid, and perhaps third party copyright holders too.

For a sample copyright clearance request form, see The Commonwealth of Learning (COL) publication, *Copyright and Distance Education: A trainer’s toolkit* ([www.col.org/copyrightTK.htm](http://www.col.org/copyrightTK.htm)).

## TYPES OF RIGHTS AND MEDIA

National copyright legislation identifies:

- **Audio:** a complete novel read onto audiotape, called *single voice reading*. Acquire adaptation rights for a shortened version. Dramatisation also requires separate rights
- **Visual:** using paintings or illustrations in another context, for example, as a poster or in a film clip
- **Audio-visual:** dramatisation, actors’ and musicians’ performances and composing rights, in addition to the rights of any original content





- **Electronic:** electronic book rights concern storing a work's complete text electronically, for example, in a database, on a CD-ROM, or online. Electronic version rights concern using parts of the material in another product, for example, as one component on a CD-ROM
- **Multimedia:** to create an interactive CD-ROM or online programme, obtain rights for the software programme to create the product, the text on screen (if prepared by a team of writers), the reading of the same text by actors, graphics and artwork, photographs, works of art, musical extracts and video clips. Each component may also have more than one copyright holder
- **The Internet and websites:** similar to multimedia.

### AUDIO, VIDEO, BROADCAST AND PERFORMING RIGHTS

National legislation may allow only certain kinds of broadcast and copying, distribution of a certain number of copies, and a specific length of time they can be used.

For example, using the complete video of a play in a literary course, or specific clips in a CD-ROM compilation. The rights to be cleared and paid for are from the creators (content and IP) and the performers (dramatic, musical or recorded).

In the case of a video, the individuals or organisations you may need to secure rights from include the original author or publisher of the work, the screenplay writer for this particular version, the television or video company, the actors, producer and director, the composer, conductor and musicians, and the owners of the video filming location.

### SOFTWARE RIGHTS

Generally, you cannot change proprietary software and it is illegal to copy without a license. Your national copyright laws may specifically mention software programmes. Many software suppliers have special licensing arrangements for educational use, and actively encourage institutions to use their products.

### ELECTRONIC RIGHTS: CD-ROM, ONLINE COURSES, THE INTERNET AND WEBSITES

The World Wide Web is subject to copyright, and web pages are literary works. The articles on web pages are separate literary works, the graphics are artistic works and sound files are recordings of separate musical works. The website itself may indicate what copying is permissible, or you can e-mail the website's administrator.

Make sure that ownership of material in an online course, or created through participation in an online course, is clarified in employment contracts and student course information. Material that is created through spontaneous or interactive online teaching, learning and research, such as a virtual conference, is also subject to copyright, although it may not be published in a conventional sense. Individuals may automatically think that they "own" articles or material used in, or from, an online conference, especially if they participated in the creation of the material. Once again, the best course of action is to contact the institution's website administrator for copyright information.

If including a *hyperlink* in your course material, you are not actually copying but may be indicating to others that they can copy from the hyperlinked site. If the hyperlinked web page is not clearly another site's home page, it will appear as part of your own site. Most national laws are unclear on this issue, so if you are including hyperlinks, check with that website's administrator.

*Digital licensing* may involve using a printed photograph in a website or in an online course, or using a complete print course or article for online

delivery. It might involve the right to digitise material, perhaps through a third party (for example, a company that produces CD-ROMs). Generally speaking, obtaining permission for electronic presentation is more likely if you will be protecting access to the material with a password system.

*Database legislation* protects the unique qualities of the database itself, such as the way it is compiled; normal access and use does not infringe database copyright.

## practices INSTITUTIONAL PRACTICES AND PROCEDURES

### COPYRIGHT OWNERSHIP: ACADEMICS, INSTRUCTORS AND AUTHORS

An institution usually owns IP rights under the employment contract of its full time staff, covering all patents, inventions, literary and artistic copyrights, trademarks and designs. The institution may also have a code of practice about rights to academic activities.

Contracts with external course developers, instructional designers, video, audio and software producers and suppliers, and anyone involved with course development for the institution, should include copyright ownership details.

### STUDENTS

Make sure that registered student details are accurate, as you may have permission to use material only for registered students. Enrolment figures can also be used to estimate third party copyright clearance payment.

If you are encouraging e-mail and computer conferencing facilities, you need to protect student copyright to their case studies, assignment answers and articles.

### COURSE DEVELOPMENT PROCEDURES AND THIRD PARTY MATERIALS

Appropriate documentation of, and procedures to obtain copyright, should be part of the course development process. Course development procedures must also handle clearance rejections and any specific conditions attached to obtaining rights, such as acknowledgement of the copyright holder in the final version of the course material. Instructional designers need to keep up-to-date with copyright developments and to provide current guidelines for authors.

For example, the author of an online business studies course may want to include a case study from a textbook published by an U.S. publisher. The author must identify the third party copyright material in the course, reference it appropriately from the text and supply all other needed details so that the institution's publishing department can clear the rights.

Copyright clearances are usually the task of a designated copyright clerk, who applies for permissions, tracks responses and rejections, the costs involved, chases originals and checks final acknowledgements. Copyright clearance may take days (if you are using a national collecting agency), weeks or months. Anything in print and reproduced in print will be quicker and easier to obtain copyright for than any other media, especially video, broadcast and the Internet.

Copyright tracking forms should be kept with the course development files. The initial budget for copyright clearances should be periodically checked against current legislation and copyright holder requirements, and use of copyright materials approved through the normal course review and signing-off process. The finance department must be alerted to the payment schedules for copyright, for example, payment per copy, per capita, per

# copyright

presentation and the form of invoicing required. Payment may also be requested in local currency.

In creating a system for clearance, you will soon develop a database of information about contacts, details of agreements, expected payments and likelihood of permission being granted. Instructional designers can then advise authors to avoid material that is likely to be either withheld, or too expensive.

## PAYMENTS AND CHARGES

Payment depends on:

- *What the material is:* print material from a non-commercial source, for example, a government document, is likely to be the cheapest and may be free
- *Who owns it:* even academic journals are commercial and may still charge to protect their subscriptions. If the institution holds the journal subscription they may allow multiple copying, including digitisation of electronic study packs free or on payment of an additional fee
- *Who else has rights to it:* any third party copyright holder may need payment too
- *What you are going to use it for:* restricting access, for example only to staff and students as part of their course material, will reduce the price
- *How you are going to use it:* print rights are cheaper than CD-ROM, broadcast and online rights
- *What protection you can offer for onward copying or misuse:* in the case of online material, it may be password protected or available only on an Intranet.

Factors for payment of third party material include:

- *Territorial restrictions:* for example, restriction to staff and registered students, or one country, Commonwealth countries, or worldwide
- *Type of media:* for example, print or online
- *Source of material:* for example, whether from a "commercial" publisher or another academic institution.

## COLLECTING AGENCIES

You may have a central Reproduction Rights Organization (RRO), for example, the Copyright Licensing Agency in the U.K., the Copyright Agency Ltd. (CAL) in Australia, KOPIKEN in Kenya and Access Copyright in Canada. They act on behalf of certain textbook and periodical publishers and national authors. They have reciprocal agreements in other countries, but primarily grant licenses to copy material within their own countries.

These RROs may grant licenses to institutions for a certain amount of copying for individual student course packs. The institution would pay an annual fee to the RRO based on its enrolments. In addition, the RRO may undertake clearance of additional materials on payment of a fee, effectively

collecting payment on behalf of copyright owners. However, some published material may be withheld by the copyright holders from this system and will require special clearance.

You may also have a national performing rights society, 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 licenses on behalf of copyright owners. Contact your national copyright agency, the International Federation of Reproduction Rights Organizations (IFRRO) or the websites of reproduction rights organisations (see Bibliography).

## buy/sell BUYING AND SELLING MATERIALS

### BUYING

Buying rights usually takes months, if not years. You will need:

- Institutional procedures for contractual negotiations with producers, and clear budgetary parameters and control
- Information on courses from producers
- Review copies from producers
- Internal processes for academic and instructional design review of courses
- Development processes for adaptation, printing, clearing any additional rights and final distribution to the students.

You may need to negotiate subsidiary rights for adaptation, translation or other media, in addition to the main print rights. The buying contract identifies the roles and responsibilities of each party, and should include arbitration and termination clauses.

### SELLING

Before selling materials, you have to ensure that you own them, particularly any material originally from an external source, or third party material. You can sell physical copies of the material, or the rights to reproduce it.

When drafting a contract, you must specify each party's roles and responsibilities, the length of the contract and the position of any third party copyright. You may also be able to sell the right to translate the material for a particular territory or to adapt it for a specific purpose, for example, radio broadcast.

A system should be in place to supply review copies to potential buyers. If you are licensing materials, you may need to supply printing films, master copies and information about third party copyright holders. If you are selling adaptation or translation rights you must supply a master copy in an appropriate format. If you sold the rights to adapt media from one form to another, for example video and audio to print or vice versa, you may want to review the final adapted version before it is released to ensure the adaptation is accurate.



## BIBLIOGRAPHY AND WHERE TO FIND HELP

Copyright in Higher Education Workgroup (CHEW), The. U.K. Centre for Legal Education. [www.ukcle.ac.uk/copyright](http://www.ukcle.ac.uk/copyright)

Crews, K. *Copyright and Distance Education*, Indiana Partnership for Statewide Education (IPSE) Faculty Handbook. [www.ihets.org/consortium/ipse/fdhandbook/copyrt.html](http://www.ihets.org/consortium/ipse/fdhandbook/copyrt.html)

Ficsor, M. 2002. *The Law of Copyright and the Internet: The 1996 WIPO Treaties, their Interpretation and Implementation*. Oxford: Oxford University Press.

Flint, M. 1990. *A User's Guide to Copyright*. London: Hale.

Her Majesty's Stationery Office. [www.hmso.gov.uk](http://www.hmso.gov.uk)

Joint Information Systems Committee and Publishers Association, UKOLN. 1998. *Guidelines for Fair Dealing in an Electronic Environment*. [www.ukoln.ac.uk/services/elib/papers/pa/fair](http://www.ukoln.ac.uk/services/elib/papers/pa/fair)

Library of Congress, The. *Copyright and Digital Distance Education*, U.S. Copyright Office. [www.copyright.gov/disted](http://www.copyright.gov/disted)

Library of Congress, The. *Copyright Basics*, U.S. Copyright Office. [lcweb.loc.gov/copyright/circa](http://lcweb.loc.gov/copyright/circa)

McCracken, R. and M. Gilbert. 1995. *Buying and Clearing Rights*. London: Routledge.

McMillen, J. D. 2002. *Intellectual Property: Copyright Ownership in Higher Education: University, Faculty and Student Rights*. College Administration Publishers.

McSherry, C. 2001. *Who owns Academic Work: Battling for Control of Intellectual Property*. Cambridge, MA: Harvard University Press.

Stamatoudi, I. A. 2002. *Copyright and Multimedia Works: A Comparative Analysis*. Cambridge: Cambridge University Press.

Wall, R. 1993. *Copyright made Easier*. London: ASLIB.

### NATIONAL COPYRIGHT LICENSING AGENCIES:

Access Copyright – The Canadian Copyright Licensing Agency (formerly CANCOPY). [www.accesscopyright.ca](http://www.accesscopyright.ca)

Copyright Agency Limited (CAL), Australia. [www.copyright.com.au](http://www.copyright.com.au)

Copyright Licensing Limited, New Zealand. [copyright.co.nz](http://copyright.co.nz)

Copyright Licensing Agency, U.K. [www.cla.co.uk](http://www.cla.co.uk)

KOPIKEN, Kenya. [www.ifro.org/members/kopiken.html](http://www.ifro.org/members/kopiken.html)

International Federation of Reproduction Rights Organisations. [www.ifro.org](http://www.ifro.org)

Copyright Clearance Centre, Inc. [www.copyright.com](http://www.copyright.com)

Culture and UNESCO – Copyright. [www.unesco.org/culture/copyright](http://www.unesco.org/culture/copyright)

World Intellectual Property Organisation (WIPO). [www.wipo.org](http://www.wipo.org)

## ESTABLISHING COPYRIGHT PROCEDURE IN DISTANCE EDUCATION

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The Knowledge Series is a topical, start-up guide to distance education practice and delivery. New titles are published each year.

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