



Naomi Korn
COPYRIGHT CONSULTANCY

In association with
Chris Morrison and Jane Secker

SCONUL COPYRIGHT TRAINING

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January / February 2015



OVERVIEW

- 10:30 – 10:40** Welcome and introductions
- 10:40 – 11:00** Introduction to copyright: types of works & usages
- 11:00 – 11:30** Licences and HE
- 11.30 – 11.45** Tea / coffee
- 11:45 – 12:15** Understanding the Exceptions
- 12.15 – 13.00** Applying the exceptions and licences
- 13:00 – 13:45** Lunch
- 13:45 – 14:45** Update on the CLA Licence
- 15:00 – 15:45** Panel discussion and open forum
- 15:45 – 16:00** Summary and close

INTRODUCTIONS

- **Decide on your team name**
- **Write your names on team score sheet**
- **Collective years experience in copyright**



PUB QUIZ

WHAT IS COPYRIGHT?



Q. What is the legislation?

A. Copyright, designs and patents act 1988, as amended and revised

WHAT IS COPYRIGHT?



Q. What does copyright provide creators with?

A. Copyright gives certain exclusive rights to the owner of a work to incentivise and reward creativity

WHAT IS COPYRIGHT?



Q. Does copyright protect ideas?

A. No, copyright does not protect ideas but the way they are expressed.



WHAT IS COPYRIGHT?

Q. What tests must a copyright work pass?

A. For a work to be subject to copyright it must be original, 'fixed' and show skill/judgement by the creator(s).



WHAT IS COPYRIGHT?

Q. What sort of content does copyright protect?

A. Copyright covers all different types of content (text, images, sound, moving images etc.)

WHAT IS COPYRIGHT?



Q. Do copyright works need to be registered?

A. No, copyright protection is automatic as soon as the work is 'fixed'.

WHAT IS COPYRIGHT?



Q. Do works need a “©” in the UK to be protected?

A. No, copyright works don't need a “©” in the UK to be protected, but it helps.

COPYRIGHT: THE GAME



The aims:

To explore copyright

- 1) Works
- 2) Usages
- 3) Licences
- 4) Exceptions

THE GAME: RULES



- 🃏 **Each round will focus on one 'suit'**
- 🃏 **Each team will have one deck of cards**
- 🃏 **Each team must nominate a card handler**
- 🃏 **Answers to the scenarios are given by placing your cards on the table**
- 🃏 **Teams will be given the opportunity to confer and agree answers**

WORKS

WHY CONSIDER TYPES OF COPYRIGHT WORK?

- © **Different durations**
- © **Different layers of rights**
- © **Different owners within content**
- © **Different licences**
- © **Some exceptions work specific**

COPYRIGHT WORKS (1)



Literary



Artistic



Musical



Dramatic



Broadcast



Sound Recording



Film

COPYRIGHT WORKS (2)

Æ **Typography**

Ⓟ **Public Domain**

🗄 **Database**

👤 **Moral Rights**

🎤 **Performance**

💡 **Non-Qualifying**

Work related

THE GAME: ROUND 1



Use your “Work” cards to identify what types of works are in the following:

- 1. Item 1**
- 2. Item 2**
- 3. Item 3**
- 4. Item 4**
- 5. Item 5**

USAGES

WHY CONSIDER TYPES OF COPYRIGHT USAGE?

- © **They are the CDPA ‘restricted acts’ as defined in law**
- © **The ‘restricted acts’ must be ‘mapped’ onto any activity to understand licences and exceptions available**

COPYRIGHT USAGES



Copying



Issuing copies to the public



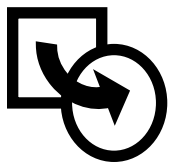
Renting or lending to the public



**Performing, showing or playing
in public**



Communication to the public



Adaptation

THE GAME: ROUND 2



Using your “Usage” cards, decide what types of usage apply in the following four scenarios.

THE GAME: ROUND 2



What types of usages apply?



1. A café owner turns on a radio for her customers



Communication to the public



Performing, showing or playing in public

THE GAME: ROUND 2



What types of usages apply?



2. A blogger uploads a picture to his blog



Copying



Communication to the public

THE GAME: ROUND 2



What types of usages apply?



3. A writer creates short stories based on characters from a TV programme



Adaptation

THE GAME: ROUND 2



What types of usages apply?



4. A tourist takes a photo of a statue on public display

No copyright infringement – see S.62 of the CDPA

LICENCES

WHY CONSIDER TYPES OF COPYRIGHT LICENCE?

- + **First point of call**

- + Can effectively provide zero risk

- + May already have paid for them

- **They all involve limitations**

- Not carte blanche

- Relationship with exceptions

COPYRIGHT LICENCES (1)



CLA (Copyright Licensing Agency)

NLA Media Access

ERA (Educational Recording Agency)



Filmbank / MPLC



Library E-resources



**Creative Commons / Open
Licences**

COPYRIGHT LICENCES (2)



‘Bespoke’ permission

T's & C's
Agree <input type="checkbox"/>
Cancel <input type="checkbox"/>

Website Terms and Conditions

Intellectual
Property
Office



**IPO Orphan Works Licensing
Scheme**



You made it yourself



**You work for / in collaboration
with rights holder**

Licence related

THE GAME: ROUND 3



**Using your “Licences” cards,
decide what types of licences
apply in the following scenarios?**

THE GAME: ROUND 3



What types of licence might apply?

Copyright
Licensing
Agency

Newspaper
Licensing
Agency

Educational
Recording
Agency



T's & C's
Agree
Cancel

Intellectual
Property
Office



1. Creating copyright guidance for the educational establishment you work for and making it available to others to reuse and build upon



You work for / in collaboration with rights holder

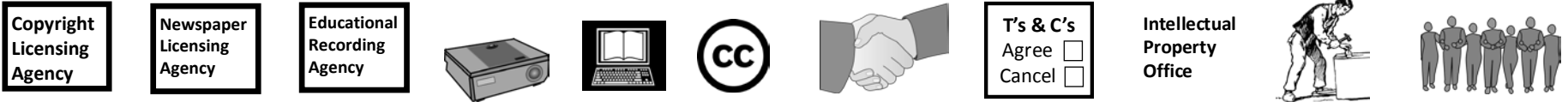


Creative Commons / Open Licences

THE GAME: ROUND 3



What types of licence might apply?



2. Taking extracts of published literary works and uploading them onto a university VLE for the use of registered students



CLA HE Licence



E-Resource Licence?



NLA Licence?

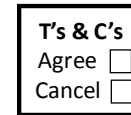


CC or Open Licence?

THE GAME: ROUND 3



What types of licence might apply?



Intellectual
Property
Office



3. Providing authorised students in the UK with online access to off-air recordings made by a university audio-visual department



ERA (Educational Recording Agency)

THE GAME: ROUND 3



What types of licence might apply?

Copyright
Licensing
Agency

Newspaper
Licensing
Agency

Educational
Recording
Agency

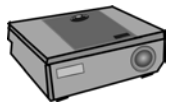


T's & C's
Agree
Cancel

Intellectual
Property
Office



4. Showing a series of obscure feature films to members of a university film club



Filmbank / MPLC / BFI?



'Bespoke' permission

THE GAME: ROUND 3



What types of licence might apply?

Copyright
Licensing
Agency

Newspaper
Licensing
Agency

Educational
Recording
Agency



T's & C's
Agree
Cancel

Intellectual
Property
Office



5. Digitising a collection of now defunct early twentieth century historical society annual reports



'Bespoke' permission?

Intellectual
Property
Office

IPO Orphan Works Licensing Scheme

COFFEE /
TEA BREAK

EXCEPTIONS

DISCLAIMER

The following slides are intended to give an overview of the key UK copyright exceptions for those in higher education institutions. They are not comprehensive, nor do they provide full details of the provisions within the relevant legislation (most notably [Copyright, Designs and Patents Act 1988](#)).

The slides are for information purposes only and do not constitute formal legal advice.

If you find anything in the slides which appears to be inaccurate or misleading please contact @cbowiemorrison.

HARGREAVES REVIEW



<http://www.ipso.gov.uk/types/hargreaves.htm>

HARGREAVES RECOMMENDATIONS



Rebalance Copyright Regime

Format Neutral

Future Proof

**Representative of Digital Practice
and Potential**

Evidence Based

HARGREAVES TIMELINE



Hargreaves' report May 2011

Enterprise & Regulatory Reform (ERR) Act - Royal Assent April 2013

New exceptions legislation published March 2014

Government response August 2011

Copyright Hub launched July 2013

All new exceptions effective 1 October 2014

FAIR DEALING



Determines whether usage is lawful or infringing based on how a ‘fair minded and honest person’ would deal with the work.

- ⚡. Does using the work affect the market for the original work? Does it affect or substitute the normal exploitation of the work.**
- ⚡. Is the amount of the work taken reasonable and appropriate? Was it necessary to use the amount?**

RESEARCH AND PRIVATE STUDY – S.29



Allows individuals to make single copies of limited extracts of copyright works for non-commercial research or private study. No contractual override.

BEFORE 1 JUNE 2014






- ⊗ Limited, ‘fair dealing’
- ⊗ Non-commercial
- ⊗ Literary, dramatic, musical and artistic works only
- ⊗ Contractual terms can override exception

AFTER 1 JUNE 2014

- ⊗ Limited ‘fair-dealing’
- ⊗ Non-commercial
- ⊗ All copyright works including sound recordings and films
- ⊗ No override by contract

TEXT AND DATA MINING – S.29A



-  **New exception**
-  **Use of algorithms to determine relationships in data**
-  **Non-commercial use**
-  **Requires legitimate subscription/access to dataset**
-  **No contractual overrides**

New

QUOTATION (CRITICISM AND REVIEW) – S.30

“”

Allows ‘fair dealing’ usage of quotations for any purposes including ‘criticism and review’. No contractual override.

BEFORE 1 OCTOBER 2014

“” Criticism & review does not cover ‘illustrative’ use

“” Works must already have been made publicly available

AFTER 1 OCTOBER 2014

“” Widened to cover any reasonable quotation, legitimising academic practice

“” Must have been made publicly available




Updated

COPYING FOR DISABLED USERS – S.31 A & B







Allows copying to provide equal access to copyright works for users with any type of physical or mental disability. On either an individual (S.31A) or institutional (S31.B) basis. No contractual override.

BEFORE 1 JUNE 2014

-  **Restricted to people with visual impairments only**
-  **Literary, dramatic, musical or artistic work**
-  **Contractual override**

AFTER 1 JUNE 2014

-  **Widened to all impairments which prevent equal access**
-  **All types of copyright work**
-  **No contractual override**
-  **Doesn't address DRM/TPM measures**

Updated

ILLUSTRATION FOR INSTRUCTION – S.32



Allows limited, non-commercial 'fair dealing' use of copyright material for the purposes of teaching. No contractual override.

BEFORE 1 JUNE 2014

- Ⓜ **Non-reprographic copying of literary, dramatic, musical and artistic works only**
- Ⓜ **Wide examination exception (not music)**
- Ⓜ **Sound recording/film exception**
- Ⓜ **Acknowledgement required if practical**

AFTER 1 JUNE 2014

- Ⓜ **Must be fair dealing**
- Ⓜ **Copying can be reprographic**
- Ⓜ **Examination exception narrowed ☹**
- Ⓜ **Covers all copyright works including sound recordings, films and broadcasts**

New

RECORDING OF BROADCASTS – S.35



Allows recording of off-air broadcasts by or on behalf of educational establishments for non-commercial purposes. Only applies where no licensing scheme (i.e. ERA) available.

BEFORE 1 JUNE 2014

AFTER 1 JUNE 2014

- | | |
|---|--|
| <p>Ⓜ Non-commercial educational use</p> | <p>Ⓜ Non-commercial educational use</p> |
| <p>Ⓜ ‘Communication to the public’ premises limitation</p> | <p>Ⓜ ‘Communication to the public’ off premises via secure electronic network</p> |
| <p>Ⓜ Dove-tails with ERA licence</p> | <p>Ⓜ Dove-tails with ERA licence</p> |

Updated

EDUCATIONAL COPYING AND USE OF PUBLISHED EXTRACTS - S.36



Allows copying and use of multiple copies of extracts from published copyright works. Only applies where no licensing scheme (i.e. **CLA**) available.

BEFORE 1 JUNE 2014

- ☞ **Non-commercial**
- ☞ **≤1% per work, per quarter, per institution**
- ☞ **Covers typographical arrangement**
- ☞ **Dove-tails with CLA licence**

AFTER 1 JUNE 2014

- ☞ **Non-commercial**
- ☞ **≤5% per work, per year, per institution**
- ☞ **Includes incorporated works (e.g. illustrations)**
- ☞ **Dove-tails with CLA licence**

Updated

MAKING WORKS AVAILABLE ON DEDICATED TERMINALS – S.40B



- ❏ **New exception**
- ❏ **Relates to a publicly accessible library, educational establishment, museum or archive**
- ❏ **Allows collection items to be digitised and viewed on site through ‘dedicated terminals’**
- ❏ **Works must have been lawfully acquired**
- ❏ **For research or private study**
- ❏ **Access must be compliant with licensing terms if they exist**




New

LIBRARY COPYING FOR OTHER LIBRARIES – S.41






Allows supply of copies of the whole or part of any published work from one library to another. No contractual override.

BEFORE 1 JUNE 2014

-  **Supply of a journal article or whole or part of literary, dramatic or musical work**
-  **Includes illustrations in context**
-  **Contractual override**

AFTER 1 JUNE 2014

-  **Supply of journal article or whole or part of *any* published work**
-  **Will include sound recordings, films and broadcasts**
-  **No contractual override**

Updated



PRESERVATION – S.42

Allows libraries, archives and museums to make copies of items in their permanent collection. No contractual override.

BEFORE 1 JUNE 2014

- 🏠 **Single copy of item in permanent collection**
- 🏠 **Literary, dramatic or musical work**
- 🏠 **Includes illustrations and typographical arrangement**
- 🏠 **Contractual override**

AFTER 1 JUNE 2014

- 🏠 **Copy an item in permanent collection**
- 🏠 **All types of copyright work including sound recordings, films and broadcasts**
- 🏠 **Items not publicly accessible or available on loan**
- 🏠 **No contractual override**







Updated

LIBRARY COPYING FOR PATRONS – S.42A









Allows libraries to make a single copy of reasonable proportions of copyright works for their patrons for non-commercial research and private study. No contractual override.

BEFORE 1 JUNE 2014

-  **'Prescribed' libraries**
-  **Non-commercial research or private study**
-  **Article in a periodical or part of literary, dramatic or musical work**
-  **Declaration form**
-  **Patron must pay cost of supply**
-  **Contractual override**

AFTER 1 JUNE 2014

-  **Not-for-profit library**
-  **Non-commercial research or private study**
-  **Reasonable proportion of any copyright work**
-  **Declaration still required but not through set form**
-  **Patron does not have to pay cost of supply**
-  **No contractual override**

Updated

LIBRARY COPYING OF UNPUBLISHED WORKS – S.43



Allows librarians to make a single copy of whole or a part of an unpublished work for their patrons for non-commercial research and private study.

BEFORE 1 JUNE 2014

- **Literary, dramatic or musical works only**
- **Work must not have been published prior to deposit**
- **Copyright holder must not have prohibited copying**
- **Single copies only may be provided**

AFTER 1 JUNE 2014

- **All types of copyright work**
- **Work must not have been published prior to deposit**
- **Copyright holder must not have prohibited copying**
- **Single copies only may be provided**

Updated

ORPHAN WORKS EXCEPTION



- ② **Orphan Works = works where the rights holder is unknown or untraceable.**
- ② **Previously required a ‘risk-managed’ approach. Now:**
 - ② UK Orphan works Licensing Scheme
 - ② EU Orphan Works Directive 2012/28/EU
- ② **Implemented in the UK on 29 October 2014**

ORPHAN WORKS



UK LICENSING SCHEME

- ② **Covers all types of Orphan Work (inc photographs)**
- ② **Commercial and non-commercial use**
- ② **Anyone can take a licence out**
- ② **Requirement for reasonable searches**
- ② **Operated by the IPO**
- ② **7 year licence term / UK only**

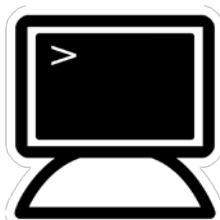
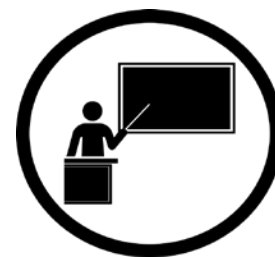
ORPHAN WORKS EXCEPTION

- ② **Covers all text and audio visual works (but not artistic unless embedded)**
- ② **Non-commercial use**
- ② **Applies to cultural and educational organisations**
- ② **Reasonable searches recorded on a database**
- ② **No geographical restriction or time limit**

COPYRIGHT EXCEPTIONS



“”



NON-CONTRACTUAL OVERRIDE



“To the extent that a term of a contract purports to prevent or restrict the doing of any act which, by virtue of this section, would not infringe copyright, that term is unenforceable.”

Copyright, Designs and Patents Acts 1988

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Copyright, Designs and Patents Acts 1988

THE GAME: ROUND 4



The final round uses all the cards:



‘Works’



‘Usages’



‘Licences’



‘Exceptions’



‘Risk’

THE GAME: ROUND 4



The Rules:

- 1. Consider the following scenarios within your teams**
- 2. Play the relevant 'Works', 'Usage', 'Licences' and 'Exceptions' cards**
- 3. Choose a level of risk from 0 to 5 and play the corresponding card**

THE GAME: ROUND 4



1. You are a lecturer at a university and you have identified a chapter in the book “A History of Greece” by Nicholas Doumanis (ISBN 9781137013675) that you want to include in your digital course reading pack. The course reading will be available on your institutional virtual learning environment (VLE). Your university library has the item in physical stock, but it is not available as an e-book.

5. A HISTORY OF GREECE

ISBN: 9781137013675

Publication Type: Book

Publication Form: Digital

Publisher: Palgrave Macmillan Higher Education

Country of Publication: United Kingdom of Great Britain & N. Ireland

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Digital

Hide details ▼

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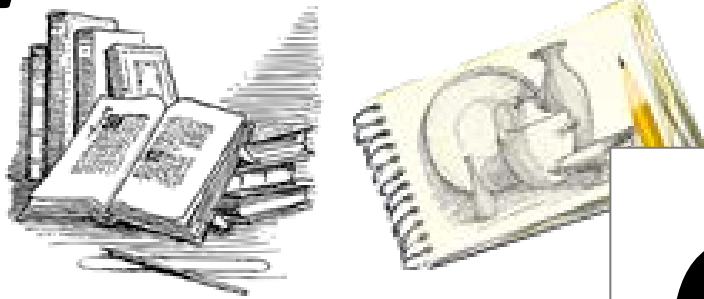
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THE GAME: ROUND 4



1. Book chapter

W



0



U

Copyright
Licensing
Agency

L

E

THE GAME: ROUND 4



2. A lecturer wants to reproduce an extract of approximately 10% of an unpublished letter written by a famous literary figure in 1953. She wants to include it in a student pack, which she is creating to accompany a philosophy course and the extract has been chosen because it reinforces a key point about the literary figure's views on art and technology. The lecturer wants to include the extract in a PowerPoint presentation and upload the PowerPoint slides, including the extract, to the university's VLE.

THE GAME: ROUND 4



2. Unpublished letter

W



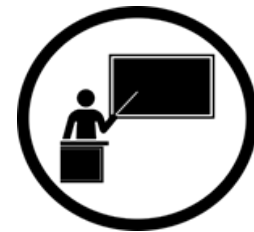
U



1

“ ”

Intellectual
Property
Office



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THE GAME: ROUND 4



3. You are creating an Open Educational Resource on architecture and want to include a photo of a Frank Lloyd Wright (d.1959) building you find on a blog. The blogger has not identified who took the picture, or where it came from and attempts to make contact with them have resulted in no response.

THE GAME: ROUND 4



3. Open Educational Resource

W



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5



“ ”



L

E

THE GAME: ROUND 4



4. You are a lecturer in a university teaching students economics, exploring the causes of the financial crisis.

a) You find some charts and a useful infographic produced by the World Bank on their website. You wish to include these in your PowerPoint slides that you will use in the lecture to explore some of the possible causes of the crisis and the impact it had in specific countries.

THE GAME: ROUND 4



4. a) Infographic in lecture slides

W

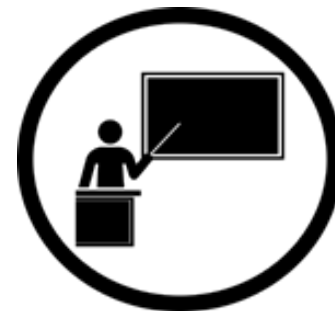


U



1

T's & C's	
Agree	<input type="checkbox"/>
Cancel	<input type="checkbox"/>



L

E

THE GAME: ROUND 4



4. Economics lecturer using an infographic produced by the World Bank.

b) You usually upload your slides to the university's VLE to make them available to students on the course after the event. You would like to do this, as well as recording the lecture via your institutional recording service so it will be available to students for revision and studying purposes.

THE GAME: ROUND 4



4. b) Infographic in lecture recording on VLE

W

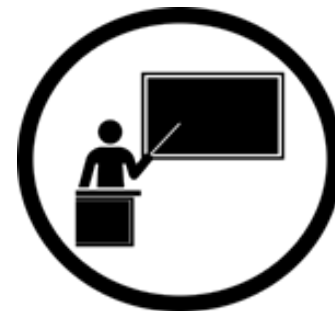


U



2

T's & C's	
Agree	<input type="checkbox"/>
Cancel	<input type="checkbox"/>



L

E

THE GAME: ROUND 4



5. You have been approached by a researcher who wants a copy of a photograph from a defunct newspaper in your library collection. The title ceased publication before the Second World War and it is unclear who now holds the copyright in it. The edition featuring the required photograph is from 1911 and there is no indication in the publication of who the photographer was.

THE GAME: ROUND 4



5. Photograph from defunct newspaper

W



0



U

L

E

OUR 3 TOP TIPS

- 1. First start by considering the works and usages**
- 2. Then consider licences and if there are none that apply, look at exceptions.**
- 3. You will always need to make a risk assessment. If relying on exception consider what is 'fair'.**



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LINKS

[IPO Guidance on changes to the law
Copyright, Designs and Patents Act 1988](#)
[Unofficial Consolidation of CDPA 1988](#)

Statutory instruments for:

- [Research, Education, Libraries and Archives](#)
- [Quotation and Parody](#)
- [Disability](#)
- [Public Administration](#)
- [Personal Copies for Private Use](#)

[Library and Archives Copyright Alliance](#)

[JISC Legal guidance](#)

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