

COPYRIGHT IN A TIME OF CRISIS

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Abstract

In March 2020, following the outbreak of the COVID-19 global pandemic, universities and schools around the world switched rapidly to online learning. In this talk, invited speakers Chris Morrison (University of Kent) and Jane Secker (City, University of London) will focus on the copyright and licensing issues that arose and the impact that they had on access to digital and print learning resources. The speakers will explain how issues associated with online learning point to the need for greater levels of copyright literacy, amongst educators and students. They argue that the pandemic could lead to a step change in the way in which content is produced and shared for teaching and learning, but only if those in education and research are able to critically examine the issues.

In the first few months the shift to online learning, referred to as "Emergency remote teaching" (Hodges et al, 2020) was largely an attempt allow students to progress with their studies. Libraries responded by trying to increase the number of digital resources available to support students studying remotely. Additionally, many publishers temporarily made a number of additional resources available for free. However, as the situation continued into the autumn, more sustained efforts were needed to plan for the new academic year and deliver high quality online teaching. As budgets across education became stretched, educators and librarians urgently considered the balance between maintaining access to existing collections and finding more sustainable solutions.

The speakers' experience suggests that copyright was a relatively low priority for many university lecturers and teachers prior to the pandemic. However, as experts in copyright and online learning (Secker and Morrison, 2016), and passionate advocates for greater levels of understanding of copyright (or copyright literacy), the speakers recognised that access to educational resources was likely to be an issue, as so few materials used in teaching are openly available (Gadd et al, 2019). In this presentation, they will discuss their response to the pandemic and highlight the actions of those in the copyright community to support online learning. They will also report on the increased traction that open educational practice has gained during this time.

In March 2020, the speakers wrote a blog post reminding the education community about existing licences and copyright exceptions that support online learning, and also the wealth of open educational resources available. They also wrote and spoke at other events for those in the education community and for senior managers and policy makers in education (Morrison and Secker, 2020). They launched a webinar series, to help support the community and build confidence in answering challenging copyright queries. These webinars became an ongoing event featuring a number of guest presenters from national and international organisations such as Harvard University and Creative Commons. Many of the webinars were open to all and included contributions from a range of different people, including those representing copyright owners and legal academics providing the community with expert guidance (Hudson and Wragg, 2020). However, some sessions were closed to allow the community to discuss sensitive issues related the interpretation of copyright law. In autumn 2020, the speakers decided to set up a special interest group in Copyright and Online Learning as part of the Association of Learning Technology. This was intended to provide the community with a sustainable basis on which to continue the webinars and build on the work already done to draw together different perspectives.

The crisis meant that despite not being able to travel, there were in fact more opportunities to speak to groups about copyright outside of the UK. The speakers presented at events in New Zealand, Jamaica and Switzerland, to name just a few countries, and it became clear that copyright issues were affecting educators worldwide. The speakers will conclude by describing their future plans, and reflect on what the

pandemic has taught them about the need for ongoing community support to develop confidence and resilience in the education sector. They will also discuss the creative ways they have devised to continue working and teaching others about copyright. Finally, Chris and Jane will share their commitment to advocating for copyright literacy as an essential part of solving the challenges the education community is facing.

Keywords: copyright, online learning, education, COVID-19, e-books, digitisation.

INTRODUCTION AND BACKGROUND

This paper is a write up of the keynote we gave at the BOBCATSSS conference in January 2021. It is based on our experiences providing support to staff and students at our own institutions during the COVID-19 pandemic, as well as supporting the wider copyright community of practice³. Chris Morrison is the Copyright, Licensing and Policy Manager at the University of Kent where he supports staff and students. Jane Secker is a Senior Lecturer in Educational Development where she teaches the digital education modules to staff completing a Masters in Academic Practice. In addition, we (Jane and Chris) run the website copyrightliteracy.org where we provide resources and support more widely to copyright specialists and educators in the UK and further afield. We have collaborated since 2015 when we developed the open educational resource, Copyright the Card Game designed to teach librarians about how to interpret copyright law and how to balance the relationship between licences and copyright exceptions.

In March 2020, following the outbreak of the COVID-19 global pandemic, universities and schools around the world switched rapidly to online learning. In this paper we focus on the copyright and licensing issues that arose and the impact that they had on access to digital and print learning resources. We explain how issues associated with online learning point to the need for greater levels of copyright literacy, amongst educators and students. We argue that the pandemic could lead to a step change in the way in which content is produced and shared for teaching and learning, but only if those in education and research are able to critically examine the issues.

EDUCATION AND THE PANDEMIC

In the first few months of 2020, the COVID-19 pandemic led to national lockdowns around the world to protect the wider population from the virus. In the UK the lockdown was implemented in late March 2020 when universities and libraries were closed, and all education was shifted online. The shift and subsequent efforts were referred to as 'Emergency remote teaching' (Hodges et al, 2020) and they were largely an attempt allow students in higher education to progress with their studies. Libraries responded by trying to increase the number of digital resources available to support students studying remotely. Additionally, many publishers temporarily made a number of additional resources available for free. However, as the situation continued into the summer of 2020, more sustained efforts were needed to plan for the new academic year and deliver high quality online teaching.

Since the pandemic, there have been several legal commentaries on key copyright issues associated with the shift to online learning. Hudson and Wragg (2020) argued for expanding the remit of copyright exceptions to encourage collective licensing solutions that better meet

³ Much of the content of this paper is written up in full in a forthcoming chapter in an open access publication, from IFLA: *Navigating Copyright for Libraries*, due to be released in May 2022. Further details are available: <https://www.degruyter.com/document/isbn/9783110732009/html>

the needs of educators. They also suggested UK universities might embrace in-house, open access publishing more swiftly. Meanwhile in Canada, Craig and Tarantino (2020) proposed recalibrating the copyright system due to the damage done by a permission-first approach to the use of digital platforms. They also questioned the narrative that copyright encourages learning or the creation and dissemination of new copyright works.

COPYRIGHT AND ITS RELATIONSHIP TO TECHNOLOGY

Copyright protects original creative works regardless of their literary or artistic merit, without the need for formal registration. This principle was a key component of the Berne Convention of 1886, the world's first international copyright treaty. Prior to the digital revolution, the lack of 'formalities' provided a practical solution which gave professional authors and creators protection for their works without the need for engaging with costly administrative processes. However, the widespread use of the internet has led to an explosion in consumption and creation of new content, nearly all of which is automatically protected by copyright. As a result, the reasonable expectations of the public to access and share content across networks is often at odds with the way that copyright laws are drafted according to a pre-internet twentieth century paradigm. Copyright is a highly contested space with key stakeholders often taking extremely divergent positions on how copyright should work. The 'copyright wars' are often characterised as battles between the those with an investment in the status quo and those who find advantage in establishing a new paradigm. Although there are many different perspectives, the protagonists with the loudest voices, and the biggest financial stakes in the clashes, are the creators of digital platforms, such as Google, Amazon and Facebook, and the more traditional legacy publishing and media companies.

The concept of copyright is often associated with ideas of authorship, which largely come from the enlightenment concepts of the romantic author, writing to make a living, and the 'gentleman scientist' working alone to discover new scientific insights. This situation bears little reality to the lives of many academic authors, who increasingly across all disciplines, work collaboratively. Their scholarly outputs through publication are usually ways partly of sharing their knowledge, but also a way of them demonstrating impact. The notion of an author, other than perhaps in some of the humanities, is quite far removed from the romantic author concept. In addition, the enlightenment view of scientific discovery and authorship has been replaced by a complex system of digital collaboration and scholarly career progression in which copyright does not provide the main incentive for creative work.

A balancing and often overlooked concept associated with copyright protection is the public domain. This is largely seen as simply what happens to older copyright works when the term of protection expires. However, as Deazley (2006) noted, the public domain actually comprises a large and valuable set of interrelated types of material and fundamental components of an overarching 'intellectual commons'. This intellectual commons underpins all creative activity in art, culture and scholarship.

COPYRIGHT AS A LITERACY

Information, digital and media literacies are important and inter-related concepts relevant to copyright. Common across the literacies is that they are cultural and communicative practices; they are not just knowledge but also contextual practices comprising skills, behaviours and values. Copyright is related to media, information and digital literacy, and often features, in a fairly minor way in literacy frameworks.

Understanding copyright can be framed as a fundamental part of the growing number of literacies that everyone needs in today's digital environment. Jacobson and Mackey (2011) call the multiple literacies "metaliteracy" which is one attempt to reconcile the troublesome and

competing terminology. The way copyright is addressed in each of the different types of literacy is different. Digital literacy tends towards the functional approach to copyright, often related to online learning. Meanwhile information literacy focuses not only on how publishing and knowledge creation works, but also on how to use, re-use and share content. For example, most information literacy frameworks address the ethical use of information and align understanding copyright with referencing, citation and avoiding plagiarism. Most of the work that focuses on the critical aspects of copyright sits within media literacy where students and teachers often use and adapt copyright works and to do this ethically and legally they need a wider understanding of copyright. Regardless of how copyright is viewed and taught, it is fair to say copyright education remains a small and specialist part of wider teaching initiatives.

The term 'copyright literacy' was used systematically in research undertaken in 2013 involving a survey into levels of copyright literacy amongst librarians and professionals in the cultural heritage sector in Bulgaria, Turkey, France and Croatia. The findings were first presented at an information literacy conference (Todorova et al. 2014). Subsequently, we provided a definition of the term copyright literacy, defining it as:

"Acquiring and demonstrating the appropriate knowledge, skills and behaviours to enable the ethical creation and use of copyright material" (Secker and Morrison, 2016, p.211).

In August 2018, IFLA launched a formal statement on copyright education and copyright literacy (IFLA 2018) and defined copyright literacy as having "sufficient copyright knowledge to be able to take well informed decisions on how to use copyrighted materials". The statement included recommendations to governments, libraries, library associations and library educators.

LIBRARIANS' EXPERIENCE OF COPYRIGHT

Copyright law and the licensing of copyright works underpin many services that libraries offer in the digital age. Many aspects of librarianship require a good understanding of copyright, including knowledge about digitising collections, tracing rights, identifying orphan works, supporting online learning and providing guidance on open access and open education. International research has found over 90% of librarians believed that copyright should form a vital part of their education and continuing professional development (Todorova et al. 2017).

Morrison and Secker (2017) published findings from a phenomenographic study of librarians' experience of copyright which identified a number of variations in experience. This research found:

- Copyright is experienced as a 'problem'
- Copyright is seen as complicated and shifting
- Copyright is a known entity requiring coherent messages
- Copyright is an opportunity for negotiation, collaboration and co-construction of understanding

Perhaps the finding of greatest significance from this research is not that copyright causes problems and anxiety, but that librarians respond to copyright in different ways. Some choose to learn as much as they can about it as a way of bolstering their confidence and knowledge. Others take on the role of being a copyright champion or advocate and relish the opportunity to educate others. However, many prefer to avoid dealing with copyright issues or deflect the queries they receive onto a specialist.

COPYRIGHT AND ONLINE LEARNING IN A TIME OF CRISIS: THE WEBINARS

The rapid shift to online learning in 2020 highlighted the tensions and challenges of copyright and many librarians they were called upon to provide advice and support to colleagues. For example, the number of queries posted to the UK higher education sector's copyright discussion list [LIS-Copyseek](#) almost doubled during the period from March - December 2020 with 941 posts compared to the previous year's posts of 514. Our response to the growing interest in the topic was initially to write a [blog post](#) "Copyright, Fair Dealing and Online Teaching at a Time of Crisis" in March 2020, which as of February 2022 has received over 7000 hits. Shortly after, we ran our first webinar on the topic, hosted by the Association for Learning Technology.

The '[Copyright and Online Learning in a Time of Crisis](#)' webinar series continued throughout 2020, 2021 and sessions are now being run monthly on an ongoing basis. The webinars have covered a wide range of copyright issues related to online learning. The topics discussed have included:

- The challenges of sourcing digital readings for students resulting from the closure of academic libraries during country wide lockdowns
- Responses from collective management organisations such as the Copyright Licensing Agency to make amendments to their licence terms to help alleviate the problem
- Problems getting access to audiovisual content, particularly when it is needed by students based overseas.

Other important topics have included: ebook licensing, in particular the issues of getting access to textbook content during the pandemic, open educational practices including the use of Creative Commons licences, good practice in copyright education and issues such as Controlled Digital Lending, which has attracted some interest in UK higher education libraries.

The sessions are typically open to all and attract an audience of around 60-80 attendees. The webinars now regularly feature guest speakers from institutions in the UK and from around the world. The guest speakers from HEIs and external organisations have included representatives from:

- The British Library
- CLA (Copyright Licensing Agency)
- ERA (Educational Recording Agency)
- PMLL (Printed Music Licensing Limited)
- Jisc Collections
- Harvard University
- Learning on Screen
- Creative Commons

SUPPORTING THE COMMUNITY

During this time our efforts to support the community were recognised by the Association for Learning Technology (ALT) who had been hosting our webinar series. ALT are the professional body representing learning technology professionals in the UK and beyond. They suggested we set up a special interest group for Copyright and Online Learning which was formally adopted by the ALT Board of Trustees in November 2020. Through this community, we have been able to appoint a committee of over 15 professionals from the UK and overseas and to expand our activities and make them more sustainable. The group's remit includes:

- Operating as a community of practice and helps to support local communities of

- practice in the field of copyright, online learning and learning technology.
- Developing and recognising copyright expertise within the educational community
 - Advocating for copyright literacy within the community and more broadly.

Further details about the group and the activities that are being undertaken are available from the group website: <https://www.alt.ac.uk/groups/special-interest-groups/copyright-and-online-learning-sig>

INSTITUTIONAL SUPPORT AND CRITICAL COPYRIGHT LITERACY

One benefit of working as a community has been the ability to explore ideas about 'critical copyright literacy'. We first proposed this concept in an earlier paper (Secker et al, 2019) when we considered how critical approaches to teaching copyright, echoing the interest in critical information literacy, would enable librarians to see copyright as more than just a set of rules. We devised a curriculum for librarians and argued that librarians can no longer be seen as "neutral" in their approach to copyright education.

The proposed critical model for copyright education was not simply a curriculum. We recognised that the way people are taught about copyright needs to equip them with a framework for tackling new copyright challenges in the future as technology and the law develops. Consequently, we argued that librarians and educators need to recognise that copyright is going to remain a part of their work and an area where they continually need to keep up to date. They will also need to become comfortable with some of the uncertainties associated with copyright and recognise that copyright is not always about right and wrong. In the next part of the paper we explore some approaches to take a critical approach to copyright literacy in our own institutions.

COPYRIGHT LITERACY AT THE UNIVERSITY OF KENT

The University of Kent responded to the challenges of copyright by developing a Copyright Literacy Strategy in 2020. This involved bringing together a working group of Kent staff and students with complementary perspectives on the challenges of copyright and considering how these related to the institution's overarching strategy. It agreed the following vision:

By 2025 people working and studying at the University of Kent will feel confident in making informed decisions about using copyright material and will understand the role copyright plays in innovation and creation of new knowledge.

The University's approach to copyright education will support its strategic objectives by informing policy and practice. (University of Kent, 2020)

The strategy also identified a number of 'values' associated with copyright which were aligned to the University's stated values. The introduction to this section states that the University takes a "responsible yet critical approach copyright law" and that "staff and students are expected to behave lawfully and responsibly, but should be able to question assumptions about copyright law". This aligns with the critical copyright literacy approach as described above.

The strategy built on and complements an existing copyright policy by explicitly acknowledging the value of building copyright literacy within the institution and identifying the associated challenges and opportunities. One key innovation was to avoid a 'top down' compliance training approach and instead adopt a networked community approach. As part of a set of agreed activities the University committed to:

Develop a network of staff whose roles involve advising on aspects of copyright law to identify opportunities for education, training and communication. This recognises that copyright often has to be addressed in context and alongside other

issues. (University of Kent, 2020)

In order to avoid this networked approach becoming a series of 'talking shops' the strategy also called for the creation of a steering group to oversee the delivery of the strategy and make institutional risk-based decisions relating to copyright. This led to the creation of a Copyright Steering Group, chaired by the Deputy Vice Chancellor of Education & Student Experience. The Steering Group proved to be highly valuable when the pandemic struck and decisions relating to provision of online access to content needed to be made.

The University of Kent Copyright Literacy Strategy has received significant national and international interest. IFLA provided their support for the strategy and several institutions in the UK and in other countries are now developing their own strategic approach to copyright.

DIGITAL LITERACIES AND OPEN PRACTICE AT CITY, UNIVERSITY OF LONDON

At City, University of London, the module *EDM122: Digital Literacies and Open Practice* was launched as part of the MA in Academic Practice in October 2018. It has now run four times, with the most recent iteration of the module being run from October 2021 – February 2022. The module is also an elective module offered to students on the MA/MSc in Library and Information Sciences. The creation of the module was partly inspired by a course at the University of Manchester which is part of its Postgraduate Certificate in Higher Education. The module tutor also gained valuable experience teaching a module on copyright literacy and open practice at the Universidad de Republicca in Montevideo, Uruguay in August 2018. These experiences shaped the content and approaches used in the new module. It was also an opportunity to design a module where copyright literacy was embedded throughout.

The module has a blend of face-to-face and online teaching. It includes a webinar series from expert guest speakers. One webinar focuses specifically on copyright literacy and its relationship to open practice and digital literacies. The webinars are all recorded and made available from the [course blog](#). The module explores a range of topics including definitions and terminology associated with open practice and digital literacies, students as digital natives, definitions of open education and open access, Creative Commons licences and the role of copyright. It also explores the concept of digital scholarship, online identity, finding open educational resources and creating digital media. Finally it considers how to embed digital literacies and open practice in the curriculum.

The cohort of participants also plays the educational game, the [Publishing Trap](#), that we created to explore the copyright and licensing issues associated with open access publishing. It is an openly licensed role play game where players in teams follow four academics through their careers. They are asked to make choices about how they want to publish their research and share their expertise throughout their life.

The module has received positive feedback, including evaluation scores of 4.5/5. The module has attracted interest from other universities after featuring as part of several conference presentations (Secker 2020). The webinar series is open to anyone not formally enrolled in the course and the recordings are made available publicly. Statistics from the blog show that the module has an impact beyond the institution. Qualitative comments from module evaluation feedback suggests that through this module, staff are able to engage deeply with issues related to digital literacy and open practice and that they also develop their copyright literacy.

CONCLUSION

At the end of our keynote talk we left attendees with three 'takeaway' messages about copyright which we felt were important for people in the library and information profession.

Firstly, it was clear that the pandemic had highlighted pre-existed problems with copyright and technology. None of the issues that were concerning the library community were new, but they had been brought to the fore because online interaction was largely the only option available. Although pandemic restrictions might ease, there was no going back to a pre-pandemic world and library user expectations had been changed forever.

We clarified that copyright literacy is a valuable way of addressing these issues because it allows for nuanced understanding of complex legal and economic systems. Using the principles of information literacy provides an opportunity to take a critical approach to considering copyright in an institutional context and to question assumptions rather than to look for the 'rules'.

Our final point was that we need to reimagine copyright education and the role of the librarian to address changes in digital practices. We need to move away from the librarian being seen as a gatekeeper to content whose responsibility is about compliance. Similarly we need to accept that the role of librarian in copyright is not to be a 'neutral' actor in a perfect system of information creation and consumption. Copyright is an area of considerable relevance to libraries where the librarians' voice is needed in order to provide the right balance between protection of and access to creative work.

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