


Introduction to copyright and open licensing

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- Understanding copyright
 - Restricted and permitted acts
 - Other rights
 - Open *



Understanding copyright

“Intellectual Property (IP) is created when an idea takes some tangible form. IP can mean a brand, invention, design or other kind of creation and it can be legally owned .”

<http://www.ipo.gov.uk/>



Does Intellectual Property = Property?

- The owner of intellectual property has a timed monopoly on its use
- Intellectual property law protects that monopoly
- Intellectual property rights come in two types: registered or unregistered
- There are many kinds of intellectual property

Varieties of Intellectual Property Include...

Patents – protect inventions

Trademarks – protect identifiers used by businesses

Database Rights – protect comprehensive collections of data

Design Rights – protect the shape and design of products


Copyright...

Copyright...

- is a form of intellectual property
- is an unregistered right – it comes into existence at the same time that the work is 'fixed'
- protects the 'fixed' form of an idea, not the idea itself
- protects material that is 'original' (requiring 'skill, labour and judgement' to create, not a copy of something else)
- a low barrier - *Walter v Lane* (1900) *Cummins v Bond* (1927)

Copyright...

- protects literary and artistic material, music, films, sound recordings and broadcasts, including software and multimedia, databases that are selective rather than comprehensive
- does not protect works that are 'insubstantial' – thus names and titles are generally not protected (although a 'passing off' or infringement action may be a possibility if the title is also a trademark)
 - News headlines a recent exception (Meltwater)
- gives the author exclusive economic rights over the copyrighted material



Restricted and permitted acts

What exclusive economic rights do authors have?

- Making copies
- Issuing copies to the public (publication, performing, broadcasting, online distribution)
- Renting or lending copies
- Adapting the work (including translating)

What if I'm employed to create copyright material?

- Your employment contract will govern who owns the copyright, although the default position will be that your employer does
- For University of Oxford employees the position is spelled out in the University Statutes XVI part b
- Even works created outside working hours may be owned by your employer if they are of the same general type as you are employed to create
- Beware! If you bring in contractors or consultants they will by default own the copyright in their work unless the contract you arrange says otherwise

When does copyright expire under UK law?

- For literary, dramatic, musical or artistic work, 70 years after the death of the author
- For films, the 70 years after the last death of principal director, the authors of the screenplay and dialogue, and the composer of any music specially created for the film
- For sound recordings, 50 years after the year of production or the year of publication, whichever is later
- For broadcasts, 50 years after first broadcast
- For the layout of publications, 25 years after publication
- Note: all terms calculated from the end of the year in question
- Also note: The duration of copyright protection has changed several times over the last decades, meaning that some authors have enjoyed renewed copyright.

How do I mark a work as protected?

- It's not strictly necessary to do so, however...
- Marking with a ©, your name (or your institution's name) and the year of composition will put readers on notice that they should consider the work to be protected
- Informal copyright registries do exist
- Supplying contact details will make it even more difficult for infringers to argue that they could not seek permission

Examples: Translations

- Permission is required to make an adaptation
- The resulting translation is likely to be a copyright work in itself
- If original authors want rights over translations this is best achieved as a condition of the agreement that permits translation
- Translations of works that are out of copyright will likely be new copyright works

Examples: Standards

- Literary works that describe a standard (specifications) are protected
- Standards in themselves are potentially protected (AMA Current Procedural Terminology, ISO country and language codes) and may require a licence from the standard owner for use in a product/database/document



Questions?



Moral rights

- + to be identified as the author of the work
- + to object to derogatory treatment of the work which would be prejudicial to the honour or reputation of the author
- + to not be falsely identified as the author of a work

Though do note:

- + Moral rights must be asserted formally to anyone who receives the work
- + Moral rights can be waived
- + Computer programs, newspaper and magazine articles and material in reference works such as dictionaries do not come with moral rights

A little on UGC

- + Managing a web site which publishes user submissions is hard
- + Copyright infringement, defamation and incitement are constant concerns
- + 2002 e commerce regulations provide some protections:

“[The hosting provider is safe if it]

(i) does not have actual knowledge of unlawful activity or information and, where a claim for damages is made, is not aware of facts or circumstances from which it would have been apparent to the service provider that the activity or information was unlawful; or

(ii) upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information, and

(b) the recipient of the service was not acting under the authority or the control of the service provider.”

Performer's rights

- + Dramatic and musical performance, improvisations, recitation of a literary work, 'acts' in the music hall sense
- + Performers have rights to permit recording and rights to permit the distribution of recordings
- + These rights last 50 years from the recording date, extending a further 50 years from the first date of being made available publicly

Database rights

- + Copyright can protect collections of data that have been selected and arranged using skill and judgement
- + Copyright can separately protect the individual data items within a database
- + Another independent right protects 'comprehensive' databases which require substantial investment of effort and/or money to create, at least within the EU.
- + This independent right also protects 'substantial' subsets of the database, for example some query results



Questions?



Fair Use and Fair Dealing

→ *What is Fair Use?*

→ Fair Use provides loose guidelines that allow a court to decide if a particular use is infringing or not

- the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- the nature of the copyrighted work;
- the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- the effect of the use upon the potential market for or value of the copyrighted work.

What is Fair Dealing?

- Similar to 'Fair Use'
- Fair Dealing is more rigidly codified and less open to interpretation by courts
- David Cameron instituted the Hargreaves Review of IP (reporting May 2011) to look at whether the UK should adopt a looser, Fair Use-style of exception
 - Hargreaves said “no”.
- Nevertheless the review recommended revising the Fair Dealing exceptions to allow greater freedom to data-mine, archive, format-shift and produce parodies

→ *What is Fair Dealing?*

→ 'Fair Dealing' is a term which describes certain uses of a copyright work under certain defined circumstances. Provided that these circumstances are in place, no permission for this use is required from the copyright owner.

→ The 'Fair Dealing' exceptions can be read in full in the Copyright, Designs and Patents Act 1988 (and subsequent amendments)

→ On the following slides some of these exceptions will be described briefly.

→ Refer to the Act to find the precise detail of the exceptions, and for some others not mentioned here

What are the Fair Dealing exceptions?

Research and private study

→A "reasonable proportion" of a literary, dramatic, musical or artistic work can be copied provided that only one copy is made for non-commercial research

Criticism, review and news reporting

→any copyright material may be copied provided that acknowledgement of the source is made in the resulting material (with the exception of sound recordings and film in used current events reporting, where no acknowledgement is necessary)

→Photos are excluded from the current event reporting exception, acknowledged or not.

What are the Fair Dealing exceptions? (continued)

Things done for purposes of instruction or examination

- Literary, dramatic, musical or artistic works may be copied if the copying is done by the instructor themselves and the method of reproduction is not reprographic
- Sound recordings and films may be copied if the copying is done by the instructor themselves and the subject being taught is the making of films or film soundtracks
- Nearly all protected activities relating to setting questions for exams, making questions available to examinees and answering those questions are permitted (only copying sheet music for performance in an exam is not)
- Materials generated under this exception (things done for purposes of instruction or examination) become infringing copies if they are subsequently sold, hired or communicated to the public.

What are the Fair Dealing exceptions? (continued)

Exceptions involving libraries and librarians

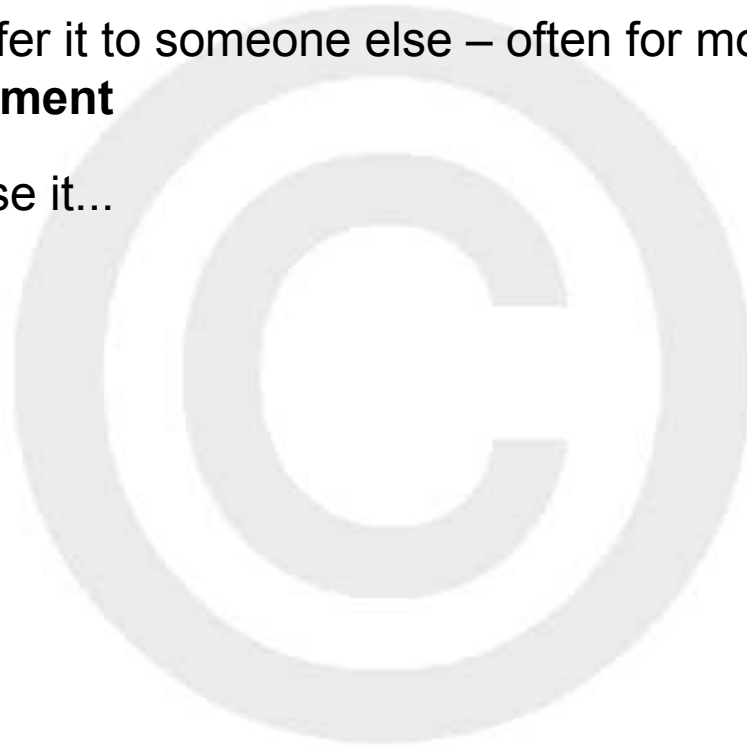
→ Librarians can make single copies of periodical articles and sections from literary, dramatic or musical works for library users provided that they are satisfied that the user will be covered by the 'Research and Private Study' exception (a statutory form of words exists which can be obtained from the library in question and signed by the library user).



Questions?

So what can an author do with their copyright?

- They can transfer it to someone else – often for money. Sometimes this is called an **assignment**
- They can license it...



What's a copyright licence?

- A copyright licence is an agreement between a copyright owner (licensor) and another person or group (the licensee)
- This agreement permits the licensee to do things which would otherwise be protected actions under intellectual property law
- Thus a copyright licence might permit the licensee to copy the work, communicate it to the public, adapt it or perform it (or any combination of those)
- Copyright licences can be exclusive or non-exclusive
- Copyright licences do not have to be heavyweight legal documents. For low-risk licensing scenarios a simple fax or email containing permission in natural language is fine.



Questions?

What is Creative Commons?

- Derived from free and open source software licensing
- Founded in 2001 by Prof Lawrence Lessig at the University of Stanford
- Designed to push back against increased enclosure of 'intellectual commons'
- Six 'general', regionalised licences for easy sharing of rights in content
- A suite of machine-, human- and lawyer-readable licences
- Some cool icons

What are the conditions?

Attribution

- Author must be acknowledged on all copies and adaptations of the work, including a link to the original version of the work



What are the conditions?

Non-commercial

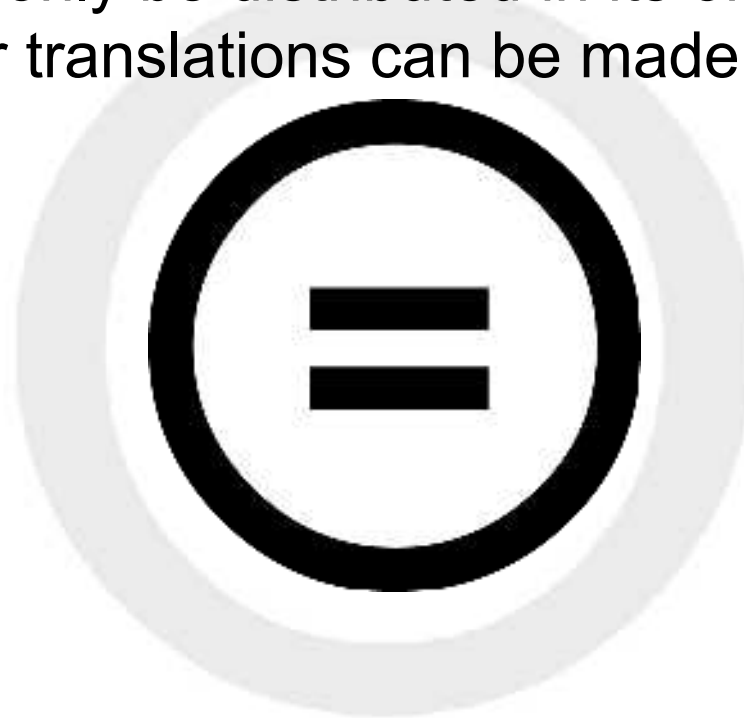
- The work can only be used for non-commercial purposes



What are the conditions?

No Derivatives

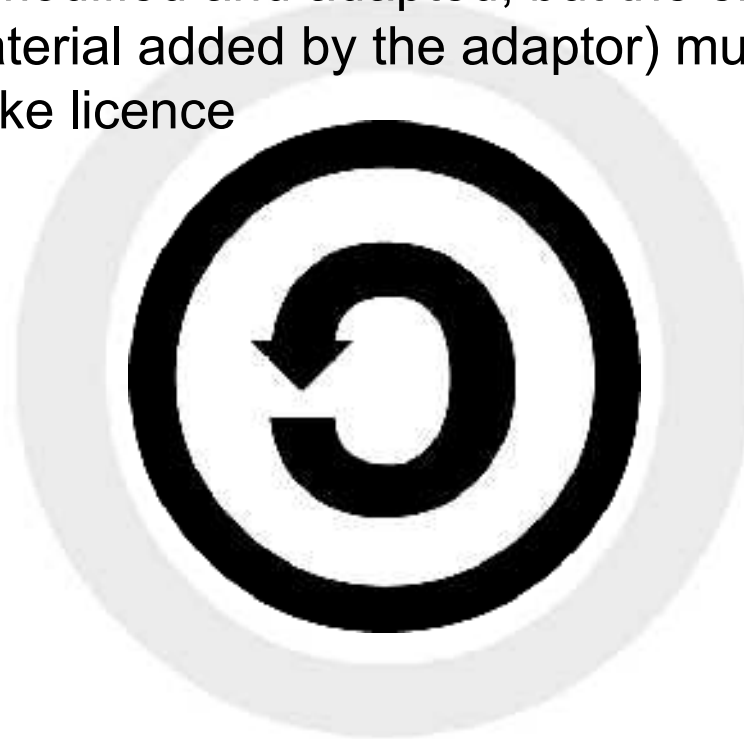
- The work can only be distributed in its original form; no adaptations or translations can be made



What are the conditions?

Sharealike

- The work can be modified and adapted, but the entire resulting work (including new material added by the adaptor) must be distributed under the same sharealike licence



What are the six licences?



Why regionalize?

- Unlike the authors of the GPL, the Creative Commons project decided that they would try to adapt their licences to the world's differing legal jurisdictions to help ensure enforceability
- The UK has two sets – **England & Wales** and **Scotland**
- The former were originally created here by a project at Wolfson College
- Regionalisation **does not** mean that you can only use resources under your local regionalized licence

What does adaptation mean?

- Your authorship will always be acknowledged
- Some examples
 - Re-use in educational material
 - Sampling your voice to use in electronic music
 - Incorporating still or moving images into a Youtube video
- Re-use must avoid ‘derogatory treatment’ meaning adaptation that risks having a detrimental effect on your reputation

What is a collective work?

- A work in which a series of unmodified works appear side by side
- Think of an anthology
- Even works that do not allow derivatives can be aggregated into a collective work, provided each work is not altered in itself and is not ‘contained’ within a larger single work.

How do I attribute?

- The author may have specified precisely how they wish to be attributed – always check
- Otherwise...
- Keep intact all copyright notices for the Work and give the original author *'credit reasonable to the medium'*
- Convey the title of the work if supplied
- Include an URL for the work as long as the version of the work at the URL includes ownership and licensing information
- In an adaptation explain the use made of the work and credit the original author as prominently as the adapter
- Credit may be implemented *'in any reasonable manner'*

How do I publish?

- <http://www.creativecommons.org> provides a web-based tool for applying CC licences to web resources
- Make sure the material is actually yours to publish
- Be wary of using logos that might be trademarks (except in attribution contexts)

Open databases

- Creative Commons looked into the issues and decided to advise data creators to make their works public domain
- CC 3.0 licences waive independent database rights where they exist
- The Open Data Commons project took a different approach, creating
 - ODC-By – a CC-BY equivalent
 - ODC-ODbL – a CC-BY-SA equivalent

Open development

- Open licensing concepts came from the world of software, where they enable 'open development'
- Licensing+internet+governance = a new collaboration model
- While the licensing model has been exported to the world of general copyright material and data, the collaboration model has failed to develop in these latter two worlds in the same way
- Why is software special?

Questions?

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Links

UK Intellectual Property Office – <http://www.ipo.gov.uk/home.htm>

Hargreaves Review - <http://www.ipo.gov.uk/ipreview-finalreport.pdf>

OULS Copyright FAQ - <http://www.bodley.ox.ac.uk/ulsd/oxonly/copyright/copyrightfaq.htm>

University of Oxford Statutes covering IP issues – <http://www.admin.ox.ac.uk/statutes/790-121.shtml>

JISC Electronic Fair Dealing Guidelines – <http://www.ukoln.ac.uk/services/elib/papers/pa/fair/intro.html>

JISC Legal – <http://www.jisclegal.ac.uk/>

Museums Copyright Org © Expiration Flowchart - <http://www.museumscopyright.org.uk/private.pdf>

The Society of Authors – <http://www.societyofauthors.org/>

Writers, Artists and Their Copyright Holders - www.watch-file.com

Copyright, Designs and Patents Act 1988 - <http://www.ipo.gov.uk/cdpact1988.pdf>

Copyright (Visually Impaired Persons) Act 2002 - <http://www.opsi.gov.uk/acts/acts2002/20020033.htm>

Copyright Licensing Agency - <http://www.cla.co.uk/>

Creative Commons – <http://www.creativecommons.org>

Open Data Commons licences - <http://opendatacommons.org/licenses/>

UK e commerce regulations - <http://www.legislation.gov.uk/uksi/2002/2013/contents/made>