

# Digital Literacy Unpacked



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# **Digital Literacy Unpacked**

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# 7

## Copyright and digital literacy: rules, risk and creativity

Chris Morrison

### Introduction and definitions

Copyright is now an inescapable aspect of learning and research when using digital technologies, and therefore awareness of it is a fundamental part of digital literacy. Rather than being a separate concept that can be considered in isolation, copyright implications arise whenever anyone creates, interacts with or shares content with others. It is therefore woven through all the key aspects of digital literacies and capabilities, with particular relevance for the ethics of sharing.

Copyright has traditionally been seen primarily as a compliance issue for educational and cultural institutions such as libraries, universities, colleges and museums – protecting an institution from claims of infringement by ‘locking down’ processes and procedures. Copyright literacy however seeks to situate the subject in a critical and empowering context. It draws on developments in the field of information literacy, which have been shaped in recent years by theories of critical pedagogy (see for example Elmbourg, 2006; McNichol, 2016; Smith, 2013; see also chapter 1 in this volume). Jane Secker and I recently defined copyright literacy as: ‘Acquiring and demonstrating the appropriate knowledge, skills and behaviours to enable the ethical creation and use of copyright material’ (Secker and Morrison, 2016, 121).

The term was first used in Bulgaria 2012 by Tania Todorova who carried out a survey of librarians’ levels of knowledge and understanding of

copyright, calling this ‘copyright literacy’ (Todorova, 2014). The survey was subsequently carried out in 14 countries (Todorova, 2017), highlighting a need for greater awareness of copyright issues among the library profession. Following the multinational survey, copyright literacy has been recognised as an important area for library and information science education and continuing professional development, though an awareness of and an ability to discuss and communicate copyright issues within educational and cultural institutions extends beyond the library profession. We are all now creators and consumers of artistic, scientific and cultural expression, so copyright and licensing affect the daily lives of everyone in education and research. It governs how we can access and use content in all forms, and it is important for it to be part of the professional skillsets of other learning support staff as well as teachers and indeed students.

However, copyright literacy is not developed simply by teaching librarians, educators or the wider public more about the arcane workings of the copyright system. It requires a critical approach to the subject, recognising that uncertainty and risk are inherent components of working creatively with copyright material. This involves examining the history and philosophy of copyright; demarcating the boundaries of what it covers and protects; understanding the practicalities and power dynamics of licensing systems (including open licensing); helping people interrogate the mechanics, ethics and cultures around ‘sharing’; and finally looking at the consequences and remedies if a dispute does arise. See Figure 7.1 on the next page for a diagrammatic representation of these five elements of critical copyright literacy first presented at the IFLA Conference in 2017 (Secker et al., 2017).

Although this chapter does not intend to expand on this model of critical copyright literacy, it is worth starting briefly with the history and philosophy of copyright in order to set some context.

### **The history of copyright and its relationship with digital technology**

Before the widespread use of digital technologies, copyright had little relevance to the day-to-day lives of most people. The first copyright legislation was enacted just over 300 years ago to regulate the publishing industry by providing exclusive rights to authors for reproductions and translations of their literary works. The means of production for literary



**Figure 7.1** *The five elements of critical copyright literacy*  
Source: Chris Morrison

works – the printing press – was expensive and therefore it was physically impossible for most people to infringe copyright.

Over the following three centuries copyright law has been expanded to cover most types of creative work. From its roots as a way of protecting the written word (hence the ‘right’ in ‘copy’) it brought artistic, musical and dramatic works under its umbrella. Then in the 20th century it was also applied to sound recordings, films and computer programs, thus providing protection for ‘entrepreneurial’ works, the owner of which was normally a commercial ‘producer’ rather than the more romantic notion of ‘author’.

Another important aspect of copyright law is that, following international agreement in the Berne Convention of 1886, copyright protection arises automatically as soon as a work is created. Again, the consequence of this for most ordinary people before the digital age was limited. Yes, private letters, amateur paintings and family photographs were all protected by copyright, but without the means to reproduce and distribute copyright works there was a clear distinction between organisations whose business was investing in and communicating creative content, and everyone else. Effectively only commercial organisations needed to concern themselves with copyright law.

The internet has of course changed this dynamic fundamentally and the web is now awash with copyright opinion, mythology and huge volumes of unauthorised content. Copyright has become the site of an ideological battle between those who believe that online activity needs to adhere to the long-standing tradition (not to say moral duty) of not copying others' work without their permission, and others who believe that copyright law should adapt or even disappear given the potential of the internet to connect and empower humanity through delivery of free access to information (Doctorow, 2010).

Between the two extremes of the copyright enthusiasts – those who follow legislative developments and case law closely in order to notch up the points scored against the other side – are the vast majority: those who realise that there needs to be some kind of system of rewards and penalties to avoid a complete free-for-all, but also note the enormous social and cultural benefit of consuming, sharing and re-using content without having to engage with complex legalities. It is certainly not a clear case of doing the 'right' or the 'wrong' thing. Studies into unauthorised file sharing demonstrate that there are a range of reasons why people engage in this activity, a major one being the lack of clarity over the way the law applies to private uses of copyright material and how it is enforced (Watson, Zizzo and Flemming, 2014).

It is also within this group of 'ordinary people' that the majority of those who are teaching or learning will sit: people who have limited time to think about copyright but nonetheless realise that there may be some aspect of it and their use of digital technologies which has an impact on their educational goals. Recent studies found that most UK students felt they didn't understand enough about copyright and other types of intellectual property for their studies or future careers (IPAN, 2016; NUS, 2013). Studies in other countries have also shown a lack of copyright awareness among academics (Di Valentino, 2015). This is an issue not just in 'creative' subjects such as art and design, which have always required an understanding of originality and transformation of existing ideas into new forms. Students in all subjects are increasingly asked to write blog posts, make videos or create visually appealing presentations and posters for their assignments. The temptation simply to repurpose content found on the web without providing sufficient acknowledgement or giving sufficient thought to the wider implications is powerful.



But the question remains, how do institutions communicate and model the appropriate knowledge, skills and behaviours relating to copyright that students are asking for, when it is such a complex and contested space? Before setting out the approach that I've been following with Jane Secker as part of UK Copyright Literacy ([www.copyrightliteracy.org](http://www.copyrightliteracy.org)), it is important to consider the 'limitations and exceptions' of the copyright system as these are intrinsically linked to the activities of education and research.

### **Fair use, fair dealing, education and risk**

An essential aspect of all copyright systems is that there should be some limitation on the exclusive rights provided to authors and producers. If it was possible for these copyright owners to successfully sue anyone who reproduced or communicated any part of their works without permission, it would significantly limit any kind of quotation, parody, homage or illustrative teaching use. This would clearly have a negative impact on freedom of expression and cultural participation. Therefore, in addition to having a time limited duration (usually 70 years following the death of the author, or date of creation, depending on the type of work) copyright law also includes a series of 'exceptions', which allow people to make reasonable use of others' work without having to ask permission.

One of the most well-known systems of exceptions is 'fair use', which is a doctrine within US law, providing a flexible test to determine whether a specific use of copyright material without permission is lawful. Fair use itself emerged from the British concept of 'fair dealing', which still applies in UK law as well as other Commonwealth jurisdictions such as Canada and Australia. Although fair use and fair dealing seek to achieve the same thing, the UK system of fair dealing can only be applied to specific uses as expressed in the legislation (e.g. fair dealing for the purpose of illustration for instruction).

However, regardless of the jurisdiction under which a person is operating (something that can be extremely unclear in an online environment), anyone wanting to make use of a copyright exception will have to make individual judgements as to whether any given activity is lawful and/or ethical. Making and relying on such judgements will rarely involve a clear cut 'right' or 'wrong' answer and will necessarily involve an element of risk. For example, is it 'OK' to take an image from the internet and use it as the stimulus for an online psychology experiment

if it is not possible to get permission? The answer to this question will depend on a number of factors including the nature of the image (is it by a well-known artist? will only that image work for the experiment?), the nature of the use (will it be available to a closed group of participants, or openly accessible to all?) and the economic impact on the rights holder (does it tarnish their reputation or undermine their ability to make money?). Ultimately it is a question of whether the benefits outweigh the risks once all the options are considered. Although risk is an unavoidable element of everyday life, the problem with copyright-related risk is that for those without necessary levels of copyright literacy to appreciate the nuances there is the strong potential to either over-estimate or under-estimate the level of risk involved.

### **Risk, rules and compliance**

From the perspective of an educational institution, the desire to minimise risk is understandable. A school, college or university is a high-profile organisation with a reputation for safeguarding trust and modelling best practice. No educational establishment would want its name associated with lawlessness or a cavalier attitude towards creators' rights, particularly given its role of instilling responsibility in their students. However, viewing copyright as simply a 'compliance' issue potentially undermines the ability to communicate copyright's importance as a key component of digital literacy. Rather than seeing copyright as a set of 'rules' which must be adhered to, lest the perpetrator face arbitrary punishment, seeing copyright as an essential component of digital literacy challenges teachers and students to consider how best to approach it in relation to their own discipline and cultural context. This is on the basis that each discipline is likely to have its own (sometimes unwritten) rules about what is and isn't acceptable behaviour when using the work of others and how creators are credited.

### **Communication to the public and open practice**

One of the main concepts that entered the lexicon of UK copyright law around the turn of the millennium was that of 'communication to the public'. Before these changes copyright law didn't explicitly pertain to activities on the internet, but after the implementation of the EU Information Society Directive in 2001, rights holders were provided with another exclusive right covering online communication. Communication

to the public remains one of the most vexed issues of European (and therefore for the time being UK) copyright law – with much complex case law defining what communication is, what a public is, what type of public they might be (new or not), and whether those communicating further had knowledge of the intention of the copyright owner regarding their original communication.

But this idea of restricting communication to the public doesn't sit well in many educational contexts if we work on the basis that education is about communicating ideas freely for the public good. This sharing for the benefit of public good is the ideology behind the Creative Commons movement (<https://creativecommons.org/>) – the free licensing toolset developed by Laurence Lessig and others in 2002. Creative Commons licences allow creators to freely license their work for use by others, particularly online, and as of 2016 there were over 1.2 billion Creative Commons-licensed works in existence.

Creative Commons has now become a fundamental component of education and scholarship with the rise of open access publishing and the open educational resource movement. It is based not on antipathy towards copyright, but rather uses legal and digital tools to allow authors to indicate that they want others to reproduce or remix their content, while still using the copyright system to set the boundaries of acceptable behaviour. There are numerous case studies of the success of Creative Commons licences from businesses and individual authors, to governments and perhaps the internet's greatest collaborative achievement – Wikipedia.

### **The limits of open licensed content**

However, despite the potential of open licensing not everything can be open within the confines of a market-based economy. Most mainstream publishing, broadcast and other media business models are based on legally enforced scarcity. Some creators want greater control over the way their content is shared, consumed and used, and it is difficult to conceive how sophisticated industrial art forms such as motion pictures could be financed without the legal protection afforded by copyright, and the ability of the rights holder to prohibit copying and performance of the work in question. In addition, those who create content for the purposes of public good such as teachers, scholars and curators need to have the economic security to release the fruits of their efforts into the public

sphere with no further monetary payment. To this extent it could be said that the extent to which someone is able to participate in 'open practice' is in direct relation to their level of privilege (Bali, 2016).

Regardless of whether the current situation is a transitional one or a reflection of the inescapable economics of creation, clearly for the foreseeable future not all content will be made available under open licence terms. Given that this is the case, how can we ensure that people's access to culture, science and education is not limited? This is where copyright exceptions show themselves to be a fundamentally important part of a functioning information society. And arguably the most important thing about either relying on exceptions or using copyright material under licence is that it is essential to attribute the creator and cite the source properly. This is the common denominator that unifies the different ideological positions on copyright – respect should be paid and recognition should always be given to the act of creation and the institutions that support and preserve creativity.

### **Playful approaches to copyright education**

Having determined that there are a range of different copyright concepts that the digitally literate person needs to understand, what is the best way to get these across? Particularly when copyright remains at its heart quite a dry and difficult subject for some, and an extremely emotive one for others.

One approach that I have been following is to use playful methods to engage learners in critical and practical consideration of copyright. In creating resources with my research partner Jane Secker, such as *Copyright the Card Game* (2017) and a new board game exploring scholarly communications choices called the *Publishing Trap* (2017) we have drawn on the success of games-based learning as a method for teaching information literacy (Walsh, 2015). The value of using games to teach 'difficult' subjects is that they provide participants with a 'safe space' and an opportunity to fail (Whitton and Moseley, 2012).

*Copyright the Card Game* allows players to grasp physically the abstract concepts associated with copyright as they are printed on colour-coded cards with clear associated icons. The aesthetic impact of the resource itself is an important part of the learning, deliberately designed to contrast with text-heavy, presentation-led copyright training sessions. This was in part influenced by the resource *Copyright User*

([www.copyrightuser.org/](http://www.copyrightuser.org/)), which is informative and visually appealing, as well as the Creative Commons icons. The card game was initially created following the reform of UK copyright law in 2014 to introduce librarians and other education professionals to the updated exceptions. The team-based approach to the game encourages conversation among peers and provides ample opportunity for interaction with the subject specialist leading the game. Although no detailed evaluation has been undertaken to measure the impact on librarians' knowledge, Walters (2017) recently completed a study reviewing the potential of games-based learning to address copyright literacy needs, citing Copyright the Card Game as a key resource and a potential model for building an interactive online game.

Play testing of the Publishing Trap has already revealed that the use of fictional game characters and satirical humour allows people to deal with contentious subjects, by taking them out of the potentially emotive real-world context. For example, research students find it easier to think clearly about the choices that Brian the Microbiologist (a hipster with a large beard who likes to spend time on his allotment) has to make, rather than considering directly their own research and the impact it has on their lives.

Copyright the Card Game has proven to be very popular with librarians (Morrison and Secker, 2015) and versions for other jurisdictions are in development (it is licensed under a Creative Commons, Attribution-NonCommercial-ShareAlike licence). Similarly, the Publishing Trap is currently generating a lot of interest in the UK and internationally. It would be interesting to see further research into whether games-based learning truly does provide the deep learning required to develop an understanding of copyright in practice.

## **Conclusion**

There is no denying it: copyright can be a difficult subject for many people to grasp. This is possibly because they find it difficult to make sense of the abstract concepts underpinning it, or the implications of applying them to any given situation, or because they are looking for certainties where none exist. In addition to this, the line between something being acceptable and not is often painfully thin and seemingly arbitrary. In many cases it is the difference between crediting someone properly, or forgetting to do so. However, simply applying credit to any

use and believing it to be some kind of get-out-of-jail-free card is clearly not an appropriate response to the law or the risks that it poses.

Despite these challenges there are many examples of good practice. Applying the seemingly dry and alien concepts of copyright law to an educational and research environment *can* be done effectively by using creative and engaging methods from information literacy and games-based learning. My own experience as co-founder of the UK Copyright Literacy research team has uncovered huge potential for exploring these difficult concepts in ways that allow them to be critically examined as well as practically managed.

Ultimately, the underlying values behind copyright literacy involve applying common sense and demonstrating common courtesy in a digital environment. To be digitally literate involves being copyright literate – being assertive yet respectful. It involves accepting that creativity is not a one-way process that pushes content from commercial producer to private consumer, but also appreciating that those who do invest greatly in creativity should be rewarded for their efforts on socially acceptable terms. Despite the temptation to want to communicate a set of neat rules to teachers and students about what is ‘right’ and ‘wrong’, we must constantly strive to bridge the gap between culture, art, science and the law to provide creative copyright education in the service of universal copyright literacy. After all, in the words of Philip Pullman (2005), ‘true education is where delight falls in love with responsibility’.

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