

IP Issues you need to be aware of if your lecture is recorded on Panopto

Introduction

The law of copyright as set out in the Copyright Designs & Patents Act 1988 ("CDPA") regulates the creation and use that is made of a range of cultural and technological goods. A copyright owner has various automatic rights including the right to copy or adapt the work, and issue copies to the public.

Various elements of a recorded lecture each qualify for protection under the law of copyright:

- The lecture materials you write and show.
- Any lecture materials that you incorporate but did not personally produce such as images and clips (whether from, hard copies, DVDs, music or TV recordings or the internet) and extracts from other copyright works (e.g. books, newspapers, periodicals, conference materials) ('Third Party Materials').
- The digitised recording itself made by the University using the Panopto system.
- The words spoken by you once fixed by the recording.
- The lecture will also constitute a 'performance' and qualify for performance rights.
- There may also be performance rights associated with Third Party Materials e.g. if a clip is of a performance.
- If those attending the lecture are recorded there are data protection issues and exceptionally there may be copyright and performance rights in what they do and say.

Third Party Materials

As teachers we are encouraged to present the educational content of our lectures so as to make this entertaining and memorable whilst not detracting from a rigorous explanation of difficult ideas and concepts. Computer technology PowerPoint and the internet have facilitated this. The learning experience can be greatly enhanced by use of Third Party Materials in lectures.

However such use must be lawful otherwise it opens the University to the risk of infringement proceedings from the rights holders of such Third Party Materials. Where a lecture is recorded and made available on Panopto there is clear evidence as to what materials have been used copied and distributed.

There are some specific defences provided for in the law (whereby Third Party Materials can be used in a particular way without the permission of the rights holder) and in addition the University pays for and has the benefit of a number of licences permitting it to use certain copyright works, for example the Copyright Licensing Agency (CLA) licence and Box of Broadcasts (BoB). If the University wants to rely on these defences and licences use must be clearly within the relevant permission.

In the case of the use of Third Party Materials in lectures which are recorded on Panopto use is educational and the materials are copied and made available via the Panopto system only to registered students following that course of study. This greatly assists in keeping the University's use lawful. For that reason it is vital that you do not make a recorded lecture available via any other means for example on your personal websites.

In addition when using Third Party Materials in recorded lectures you should follow the Guidelines below:

Guidelines

1. If you are copying a small extract from a conference paper or book or written publication (whether you use or digitise the original work or copy it) which directly relates to what you are teaching you should be able to include this in your lecture under the 'illustration for instruction' exception to infringement (s32 CDPA). However to qualify under this exception the extent of the copying must be no more than necessary for the specific teaching purposes you are seeking to illustrate to the class, and you must give sufficient acknowledgement (which means name the copyright owner and that it is his/her copyright (in the same way as you would for an academic citation)). You should do this on the PowerPoint or presentation materials which you show in class. If the materials are then put on Moodle the third party material you have used should also be acknowledged in that way and they must be securely sent and made accessible only by the students on the course. The amount of copying and scanning that can be done under this section is quite limited.

You cannot rely on this exception if the use of the material is only indirectly related to what you are teaching or included for entertainment or aesthetic reasons.

2. If you want to use a longer extract from a book or publication you cannot rely on the 'illustration for instruction' exemption and instead should use material covered by the University's CLA or NLA licences and arrange for the copying or scanning to be done in accordance with its terms. To use the CLA licence you should arrange for the library to scan the extract for you so you can include it as part of the presentation and make it available to students electronically. Academic staff may want students to undertake this reading before the lecture where possible. Most academic textbooks and publications that you might wish to make available on this basis are covered by licences from collecting societies such as CLA and NLA.

You should be aware that the licence terms require that a library staff member does the scanning not least so that the relevant returns are made (and the person who authored the work gets payment) and so the University complies with its record keeping requirements. There are also limits as to how much of a book can be scanned by the University as a whole (not a particular lecturer) so this must be checked. The library offers guidance on this:

<http://www.bath.ac.uk/library/services/scanning.html>

Again the author must be credited and a copyright notice included in respect of the relevant extract and the digitised copy can only be made available to the students on that particular course of study.

3. If the work you wish to digitise and use in your lecture isn't covered by such a collecting society licence then S 36 CDPA permits extracts to be copied and distributed by an educational establishment via a secure network if this is done for instruction and there is sufficient acknowledgement of the author and copyright, but you have to try to use the CLA Licence if the work is covered by it (i.e comply with 2 first). There are again limits as to how much of a work can be copied (not more than 5% of a work by the whole University every 12 months).

Because of this requirement you need to ask the library staff to undertake this scanning activity as well.

4. In relation to video clips from TV, Open University and the like and all materials covered by the Educational Recording Agency you should wherever possible access the clip via Box of Broadcasts ('BoB'). BoB has a wealth of resources available for staff for which the University pays a substantial licence fee. BoB is accessed via the Library so the University meets its reporting obligations. In order to comply with the licence terms it is important that you use the clips only for educational purposes.

In the case of materials used under these licences because of the licence terms it is important that the clip is not recorded on (or is erased from) the Panopto video of you lecturing. This is important as the BoB and ERA licences only cover the University using the recording per se and do not permit making another recording of it. The legal position is that although the materials can be shown to the class these materials cannot be recorded and the recording cannot be distributed. We should therefore erase the secondary recording (of the clip) from the recording of the lecture before making the recorded lecture available to our students. Alternatively simply stop the Panopto recording when you are showing the clip and then switch record back on when it has finished.

The student watching the recorded lecture can still enjoy the full experience and watch the clip since you can make the clip available on Moodle via the relevant link (which is easy to access as you are accessing the clip to play in the first place). Again this link should display the appropriate copyright notice and must be password protected so only authorised students on that course can access this. However once these conditions are met the students can have a much better experience of viewing the clip (than on a blurred and illegal re-recording).

If materials aren't covered by these licences there is a statutory right to record and show broadcasts for educational purposes (S 35) and make them available securely to relevant students undertaking the course but this would seem rare. The University is legally obliged to access material under and in accordance with the licence if possible.

5. In relation to materials such as still images and extracts which are made available on the web, it is important to remember that just because something is on the web does not mean that it can be copied and used and distributed again. So lecturers need to check whether the owner has granted a licence to you and the University to use as proposed. In very narrow circumstances the copying could be within 1 above but it is not recommended that anyone relies on this as the educational purpose is extremely narrow when it comes to that type of visual material and you would have to be teaching the particular material shown. Copyright law protects images and photographs so unless you are the copyright owner (e.g. you took the photograph) you need permission to use any such work.

Instead you should check for material that the person who has put it on the web has also freely licensed, for example made available on a creative commons basis with the right to sub licence. Creative Commons ('CC') are standard licences designed to enable copyright owners make their work widely available for use provided that the user abides by the relevant licence terms. The lecturer must also ensure compliance with all the terms of the licence (as shown on the relevant website). In particular it is always best wherever possible to acknowledge the copyright owner. More information about 'Free Images' available on the internet is available from JISC.

Many online resources such as 'Flickr' have libraries of images which are available for use under a creative commons licence. In the case of use in a lecture at a University use may not be regarded as non-commercial so it is recommended that you select material which is available for use on an Attribution - No Derivatives ("BY-ND") type of CC licence. Again this means that it is important that you credit the owner of the copyright work and state that you are using it with the owner's permission under a creative commons BY-ND licence.

6. As regards video materials available on the web such as YouTube this is fraught with danger but is acknowledged to be a useful teaching resource. The lecturer should first check that what is featured on the YouTube clip does not infringe anyone else's copyright or performance rights (e.g. if it appears likely to be a clandestine or unauthorised recording of a play or concert or even a conference!) and if in doubt don't use it. It is best to try to use materials that have been uploaded by organisations such as the BBC. As with the ERA and BoB licences the YouTube licence again does not permit re-recording so again whilst you can show this in class (and should again credit YouTube

and the person who made it available on YouTube) you must pause the Panopto recording whilst it is being shown to the class or ensure that this is wiped from the Panopto recording. You can however just direct the students on the Moodle materials to the link.

This may seem cumbersome but ensures that we are within the licence terms and makes the clip much easier to see than a blurred picture and sound on a re-recording.

7. An important message to communicate is that these materials and clips must only be shown and be made accessible to a class of your (or the relevant lecturer's) students on that particular course (not to the public) and the students' access must be password protected on the same basis. So the materials should not be made available on a personal web page that is more widely accessible or shown to anyone outside the University.
8. Different rules apply where a lecture is to be recorded and made available generally across the University (that is not restricted to particular students on a particular course) or more widely.
9. If the lecture is accessible only to registered students on a particular course the Golden Rules are:-
 - 1) Always credit the copyright owner of all materials you use.
 - 2) If the use is minimal and goes to the core of what you are teaching use is permissible under the 'Illustration for Instruction' exemption.
 - 3) Otherwise access materials where possible via the CLA, ERA or BoB licences.
 - 4) Be careful with YouTube.
 - 5) Don't record an ERA, BoB or YouTube (or other) video clip on Panopto but you can put the link on Moodle.
 - 6) Don't put your Panopto lecture anywhere where it can be accessed by anyone other than the permitted students (on that course).

Your own Materials

Materials that you create to include in a lecture constitute scholarly output in which you own copyright. Copyright in the words of the lecture (once fixed by the recording) also belongs to you and you have automatic performance rights.

The University has a licence to use your lecture materials and the recorded lecture as provided in the IP Policy. Your 'moral rights' are also preserved which provides you with assurance that your materials will not be adapted and you will be credited when the University uses them.

Rights of Those Present

You should inform those present that the lecture is being recorded and allow them to move seats (if necessary) to avoid being captured.

It is recommended that lectures which are recorded and made available on Panopto do not feature presentations by students. This avoids complications with data protection, performance and copyright issues. Where a student is recorded for the purpose of examination or to learn presentation skills the recordings should not be uploaded to the Panopto system or distributed or used by the University for any purpose not directly connected with that particular student's development and examination. In addition lecturers should ensure that the relevant Data Protection Act consents have been obtained.