How to move beyond lecture capture: 

*Legal guide*

Gérard Casanova, Yacine Abboud
& Joy Peynet
How to move beyond lecture capture: 

*Legal guide*

Gérard Casanova, Yacine Abboud & Joy Peynet
## 1. Table of contents

1. Table of contents .................................................. 1-2

2. Foreword ........................................................................ 2-4

3. The REC:all project .......................................................... 3-4
   3.1 Aims of REC:all .............................................................. 3-4
   3.2 Partnership ...................................................................... 3-4

4. What is copyright? ............................................................ 4-4

5. Rights Protected ............................................................... 5-5

6. European legislation .......................................................... 6-5
   6.1 UK Copyright Law .............................................................. 6-5
   6.2 French Copyright Law .......................................................... 6-6
   6.3 Dutch Copyright Law ............................................................ 6-7

7. The Internet ................................................................. 7-7
   7.1 General Rules of using copyrighted material and referring to copyrighted material in a web lecture 7-7
   7.2 Open Educational Resources (OER) ............................................. 7-9
   7.3 Creative Commons License ................................................. 7-9
   7.4 Some examples of the use of licensed material from the Internet in your weblectures .................. 7-9
   7.5 5. (Re) use of your own material ............................................. 7-10
   7.6 Using student material ....................................................... 7-11

8. The right to a person’s image .............................................. 8-11
   8.1 Common law ................................................................... 8-11
   8.2 Civil law ........................................................................... 8-12
   8.3 Is there a right to image vested in objects? ........................ 8-13

9. Audio and video materials ................................................... 9-13
   9.1 Commercially produced audio and video materials ..................... 9-13
   9.2 Public screening of video materials ....................................... 9-14
   9.3 Making audio and video materials public .................................. 9-14
   9.4 Filming, Photographing or recording your lecture ....................... 9-15
9.5 What about YouTube? ........................................................................................................... 9-15

10. Protecting resources that you have created ........................................................................ 10-16

10.1 Economic rights ................................................................................................................. 10-16

10.2 Moral rights of the author ................................................................................................. 10-16

11. Advices ............................................................................................................................... 11-17

11.1 Podcast (Creation) ............................................................................................................. 11-17

11.2 Recording lectures ............................................................................................................ 11-17

12. Bibliography .......................................................................................................................... 12-19

13. References for further information ...................................................................................... 13-19

14. Annex: World Café discussion statements - Table C: Intellectual Property Rights and Copyright issues 14-21

14.1 A teacher has the right to upload a recording of his lecture, produced with the means of his university, to YouTube. ........................................................................................................ 14-21

14.2 When a teacher makes his self-made course video available on the University’s Virtual Learning Platform, colleagues are free to use this it. ........................................................................................................ 14-21

14.3 A University is allowed to make recordings of lectures available to students without prior authorisation of the lecturers in the video. .............................................................................................. 14-21

14.4 A teacher records an interview with some of his students in the classroom, he asks for permission to film and use the image only from interviewees. ........................................................................................................ 14-22

14.5 When I use third-party audio visual material in my PowerPoint Presentation I am allowed to make it available on the University’s closed internal space. .................................................................................. 14-22

14.6 When I use a 5 seconds fragment of a video in my lecture, I am allowed to do so without asking permission to the owners. ........................................................................................................ 14-22
2. **Foreword**

With the growing use of new technologies to produce lecture capture, it became harder and harder to understand the legal issues. Moreover the legal and copyright issues surrounding lecture capture vary across the EU. This practical guide has been developed to help users (teachers and students) and institutions with legal aspect concerning lecture capture.

3. **The REC:all project**

REC:all was a transnational learning technology project (2011-2013) supported by the European Commission under the Life Long Learning Programme. It aimed to explore new ways in which lecture capture could become more pedagogically valuable and engaging, and investigated a variety of learning design, technical and legal issues.

3.1 Aims of REC:all

REC:all researched how lectures are currently being captured and used, explored learning designs for flexible and off-campus delivery, and reviewed technical, pedagogical and legal issues with an aim to producing practical guidelines such as this one to help teachers. The project developed an active community of practitioners in this exciting area [www.rec-all.info/] working with existing academic communities such as ViTAL (UK) and Special Interest Group (SIG) Web lectures (Netherlands).

As part of the project REC:all tested a range of lecture capture ‘cases’ as carefully selected mini-projects. The projects were evaluated with a focus on student feedback. The aim was to develop transferable and tested pedagogical models, reference descriptions and benchmarks of good practice. These were first released in 2013 as a set of REC:all guidelines – technological/pedagogical guidance fully supported by web resources including examples of use which will be released via the REC:all web site above.

3.2 Partnership

The REC:all partnership consists of:

- University College London (UK) - Project Leader
- ATIT (Belgium)
- Université de Lorraine (France)
- VrijeUniversiteit Amsterdam (Netherlands)
- UniversitatPolitecnica de Valencia (Spain)

4. **What is copyright?**

Basically, copyright hinges on the question of who is the author of an original work. An original work can take various forms: text, image, audio recording, video recording, computer software, website, etc. Copyright is immediately effective upon the creation of an original work. The creator of an original work does not have to register his/her copyright in the work before it is protected. Copyright automatically belongs to the author or creator - but it may also be assigned to a third party, for example a publishing business. The copyright owner has the exclusive right to prevent any third party from doing any of the following without permission:

- Copy the work - which includes photocopying, scanning in texts or images and reproducing them in electronic format, and duplicating audio and video recordings;
• Communicate copies of the work to the public - which includes, for example, making a copy available on a public website or intranet;
• Perform a drama or play, a piece of music or a song before the public - which includes making recordings of such performances and uploading them to a public website or intranet;
• Make an adaptation of the work - also known as creating a derivative work.

Copyright in a work lasts most of the time for 70 years after the death of the creator. Unless a work is clearly stated to be copyright-free or out of copyright by virtue of its age, it is illegal to download, scan or otherwise copy the said work for onward dissemination, even if no financial gain takes place.

A case of copyright infringement applies where the copyright material is being used. In other words, in the UK you are subject to British laws on copyright irrespective of the country of origin of the item you intend to copy.

5. Rights Protected

The most important feature of any kind of property is that the owner may use it exclusively, i.e., as he wishes ('he' is used generically here), and that nobody else can lawfully use it without his authorization. This does not, of course, mean that he can use it regardless of the legally recognised rights and interests of other members of society. Similarly the owner of copyright in a protected work may use the work as he wishes, and may prevent others from using it without his authorization. The rights granted under national laws to the owner of copyright in a protected work are normally exclusive rights to authorize a third party to use the work, subject to the legally recognized rights and interests of others.

There are two types of rights under copyright. Economic rights allow the rights owner to derive financial reward from the use of his works by others. Moral rights allow the author to take certain actions to preserve the personal link between himself and the work.

Most copyright laws state that the author or rights owner has the right to authorize or prevent certain acts in relation to a work. The rights the owner of a work can prohibit or authorize are:

• its reproduction in various forms, such as printed publications or sound recordings;
• the distribution of copies;
• its public performance;
• its broadcasting or other communication to the public;
• its translation into other languages;
• its adaptation, such as a novel into a screenplay.

6. European legislation

European Copyright Law is harmonized to a large extent. The European Union gave directives to its member state to harmonise copyright. But does that mean there is a common European Copyright without national differences? Well there are still differences. There is still a big difference between the Common Law countries (UK, Ireland) and the rest of the European countries. But there are also national differences in the way the directives were implemented. This is for instance noticeable in the way copyright exceptions were implemented. So there are still national differences. It is advisable to always check on your national copyright law.

6.1 UK Copyright Law
Copyright in the UK is governed by the Copyright, Design and Patents Act 1988, which is the primary piece of legislation dealing with Intellectual Property Rights (IPR). The Act has been extensively amended since it came into force in 1989. Many amendments have also been brought in to implement European Commission directives. See the Intellectual Property Office site: http://www.ipo.gov.uk/types/copy.htm

Copyright legislation covers:

- Literary works
- Dramatic works
- Musical works
- Artistic works
- Computer programs and databases
- Audio recordings
- Video recordings
- Films
- Radio and TV programmes - broadcast or cable
- Typographical arrangement of published editions

The UK Intellectual Property Office (IPO) website is a comprehensive source of information on Intellectual Property Rights (IPR): http://www.ipo.gov.uk

6.2 French Copyright Law

The droit d’auteur (or French copyright law) developed in the 18th century at the same time as copyright developed in the United Kingdom. Based on the "right of the author" ("droit d’auteur") instead of on "copyright", its philosophy and terminology are different from those used in copyright law in common law jurisdictions.

The droit d’auteur, in France or in Germany, grants (subject to exceptions) the benefit of the right to natural persons (the author or his heir(s)) and denies it to legal persons (except for collective works) whereas copyright grants additional rights to the editor or the producer.

Anyway, there are specifics rights for the producer in French legislation, but these rights are not considered as "droit d’auteur" but as “droits voisins du droit d’auteur” (“neighboring rights”). They are rights granted to the auxiliaries of creation, such as producer, editor, corporate in communication and visual, performers... In brief, to the persons who allow the disclosure of creations. The specificity of “droits voisins” is that they only include financial rights, and not moral rights, which is inherent to the French author right.

Actually legal persons have rights in French legislation, which are more alike copyright, but which are not author’s right which can only protect a physical person and not a company. Therefore, when a work is created by an employee, there must be an express clause so that the copyright belongs to the company. Anyway the employee will keep his moral right, that is paternity right, the right to say that he is the creator of his work.

The copyright protects a mind’s work ("oeuvre de l’esprit"). No registration of the right is necessary to protect it (e.g. an individual can write a novel and print it by his own, his creation is protected by the author right), it is protected because it exists. But there are two important conditions for the mind’s work to be protected:

- It must be an original creation: That is a real intellectual effort which is not only a simple implementation of a technique or a knowledge, actually there must be the author’s imprint of his personality; e.g. even if your course is based on facts, the way you present it and organize it, shows your personality imprint, so your course can be protected by the author’s right.
- The creation must be on a material support (regardless of the support), since French law doesn’t protect ideas; French law requires a support to protect a work, but it can be anything, like a book, a
The classical difference between the two systems is the recognition of moral rights in the droit d’auteur whereas such rights did not initially exist in copyright. Hence, in civil law, the author is granted a moral right which sees the expression of the personality of the author in the work. In practice, the author will have a right to disclosure, a paternity right, a guarantee that the integrity of his work and his wishes are respected as well as a right of withdrawal (see Moral rights of the author).

6.3 Dutch Copyright Law

Dutch Copyright is a creator’s right. It protects any work created by an author. A work can be anything that has its own original character and shows the personal signature of the author. The scope is very broad. Anyone taking a photo, writing a letter, a drawing or a making a video with an iPhone is automatically a creator of a work. And the work is automatically protected by copyright. The creator has the right to prohibit any reproduction or distribution of the work. So anyone who wants to copy or distribute the work needs permission from the creator. A performance of music or a play is also a work regardless of the copyright on the music or the play. The performers have copyright on their performance. Any use without permission is an infringement.

There are exceptions to copyright. An exception gives one the right to use copyrighted material without permission by the creator under certain circumstances. But these exceptions are not really different from those you can find in other European legislations.

7. The Internet

It is most important to keep in mind recent copyright legislation if you intend to use or publish materials via the Internet, e.g. on a World Wide Web site. The use of Web materials for teaching and learning is quite different from the use of printed and broadcast materials. Publishing on the Web is different from publishing in other media: see Casey (2004), which is a useful guide for anyone willing to develop Web materials.

7.1 General Rules of using copyrighted material and referring to copyrighted material in a web lecture

What material can you use without fearing to infringe copyright? Before we answer this question it is important that you can identify copyrighted material, especially in the Internet age. Are there different rules online? Basically from a legal point of view there is no difference between the print world and Internet. Because most material on the Internet is created by man you must assume that it is copyright protected. Blogs, tweets, a picture of a friend’s baby on Facebook, advertisements, amateur film clips, newspaper articles, websites (as much the contents as the website itself), etc. All are protected by various rights. To use them you need permission!

So all materials published on the Web (texts, images, audio files and video files) can be subject to copyright and may not be disseminated, e.g. copied and pasted into your own website, without the copyright owner’s permission. Permission may be granted in the owner’s Terms of Use, as stated at their site, or it may have to be sought directly from the copyright owner. It is insufficient to simply acknowledge the source of the
materials. For example, if you wish to use a piece of text or an image from someone else's website, then you must treat it as you would any other piece of copyrighted work; in other words gain permission (copyright clearance) to use the text or image. You have to approach the website owner and state precisely which piece of text or which image you wish to use, and what you intend to do with it. If permission is granted then you can only use the materials for the purposes stated, and you can be sued for infringement if you use them for other purposes.

Many people think that because something, e.g. an image, is on the Web it must be in the public domain. This is not so. The term "in the public domain" has a special meaning.

The work can be in the public domain because the owner has relinquished copyright on the work, and has explicitly stated so. Usually it is because the term of copyright is exceeded. Copyright’s term is in almost cases 70 years after the author’s death. The term is of 50 years in UK in the case of audio and video recordings, audio and video broadcasts, and computer-generated works.

You may be lucky to find materials on the Web that are stated to be copyright-free or in the public domain. Look for a clear statement saying "The materials on this website are in the public domain" or something similar (see Creative Commons License).

However there are several ways to safely use copyrighted material in your web lectures.

**Citation** is an exception making possible to use (part of) the work in your own work. Scholars are familiar with citations in scientific publications. They are used to citing the findings of other scholars and know that they have to use the proper attribution.

Citation in the legal sense is permitted if the citation is used for announcement, review, critique, discussion or similar purpose. You can use it in a (web) lecture. The citation should be part of a larger work. The cited part should be subordinate to the main message. It can be a part of a text, an illustration, music or film fragment, etc. The use of a picture as a citation is possible when the lecture is actually referring to the picture. You can’t use a picture just as an illustration. The use of music as a nice background for a filmed lecture is also not a citation. Attribution to the source and author(s) is always required.

“**Educational and research purposes**” is also an exception to copyright admitted in the whole European Union. Unfortunately the solutions may vary from one country to another, and sometimes law is blurred and interpretations are unlike. Generally you can consider that you can use a work protected by copyright in a course when it is for educational purposes, as much as it is a relatively short extract, and seen only by students or teachers. Otherwise you must ask for permission.

Deep links or hyperlinks are links on a web page which are clickable and which will send you to another web content. Putting deep links to copyrighted material on the Internet can seem harmless, however this is a controversial matter which is regulated differently between countries, and which has often no legal answer. Therefore you must be careful the way you use these hyperlinks on a website.

**License** is another word for permission. A license can be a long contract or very short statement from the copyright owner giving you permission to use the material. Licenses usually describe precisely what you are allowed to do with the material and to whom you are allowed to distribute it. The Creative Commons License is an example of a license that allows you to use and share material with very little restriction. Your University has licenses with publishers allowing employees and students only to use copyrighted material. You should always be aware of what audience is going to use the web lecture and whether the license allows you to share the material with this audience. So if you wish to use materials from someone else’s website, check the **License**, (also known as Terms of use, **Terms and Conditions** or **Terms of Service**), which you will usually find at the bottom of the Web page or via a clickable link at the bottom of the page.
7.2 Open Educational Resources (OER)

UNESCO believes that OER are a strategic opportunity to provide wider access to courses in higher education. Its definition of OER is “teaching, learning or research materials that are in the public domain or released with an intellectual property license that allows for free use, adaptation, and distribution”. Notable OER initiatives fall into 3 broad categories: open courses (such as MOOCs and Open Courseware), open textbooks, and digital assets. All of them must respect copyright.

For instance MOOCs are Massive Open Online Courses, i.e. online courses aimed at unlimited participation and open access via the web. Regarding copyright, the main difference with a regular course is that it is accessible to anyone and not only students from a particular class room. Therefore it can’t benefit from the exception for educational purposes (see 7.1) which requires that the work used in a pedagogical aim is broadcasted to a reduced public of students. In other words, unless you have prior authorization from the owner, you can’t use third party content in an OER!

One who wishes to put his/her material on an OER must first check who owns the right on the material (see (re) use of your own material). It is probably the university, so it can freely put the teacher’s course on an OER. Otherwise it must ask permission from the author, i.e. the teacher who created the course. This permission will be given by a license. Creative Commons is an example of free license, and most of MOOCs and OCW use CC licensing.

7.3 Creative Commons License

The Creative Commons License (CC license) was specifically designed to make publishing and sharing of copyrighted material easier. Anyone can offer a license for their copyrighted material by placing a web link to the CC-license and CC-icon on their website. The essence of the license is that the maker of a work retains copyright while allowing others to copy, distribute, and make some uses of their work. The icon makes it known what the conditions for the use of material are. Provided the authors get the credit they deserve for their workman author can also choose to allow commercial use or allow derivative works (i.e. adaptations or expansions of the original work)to be made from the original. With the ‘Share-a-like’ option anyone who wants to create derivative works is required to make the new work available under the same license terms. There are several search engines that allow you to search exclusively for material with a creative commons license.

7.4 Some examples of the use of licensed material from the Internet in your weblectures

The Social Media revolution has provided us with a wealth of services that invite us to use, create and share copyrighted material offered on the Internet in our own works. These services offer great opportunities for educational uses and are often free. But you should realise that there are limitations in the way you can use them. The conditions for the use of the service are usually found in a License Agreement on the website of the service. You are bound by the conditions of the license agreement. We will see some examples of Social Media and their particular license terms.

For example, Google makes it possible to combine all sorts of data and multimedia with the geodata and functionality in Google maps. The case study ‘Rome in the film, film in Rome’ makes use of this feature to display film locations and additional student uploaded data and pictures on the Rome map.
For these applications Google provides a free API (Application Programming Interface). Although it is obvious that Google wants you to use their service and API it is important to realise that you have to adhere to their conditions for use and sharing. Google maps uses a license that demands that any service you develop with the API must be freely and publicly accessible to end users. This means that you can only use Google Maps with your application in an environment that is freely accessible for anyone. This means that the use in a closed environment like a digital learning environment without prior written consent by Google is not permitted. Fortunately there is an alternative for Google Maps called The Open Street Map project. The conditions of Open Street Map and the Open Layers API allow you to use it in any environment. It goes without saying that any material used to enhance maps can be subject to copyright. You should therefore make sure you are permitted to use it. And you should make sure you are permitted to use it in the environment you want to publish the lecture.

Screencasts of Google Maps or using screenshots in a weblecture is governed by a different license. Its conditions permit use in a classroom or weblecture under the condition that you display Google Maps.

The Flickr photo sharing site offers a wealth of choice of pictures. With a free account you can upload your own pictures here and easily use them in a web lecture or on a blog. By uploading images to Flickr you grant Flickr a non-exclusive, royalty free license to display the pictures. You retain your own copyright. You can also choose to publish your pictures with a Creative Commons license. So be aware when you want to use Flickr pictures you sometimes need to ask permission from the uploader. However a large part of the pictures in Flickr are licensed through a Creative Commons license.

The use of services from Google or other Social Media sites for educational use of materials in web lectures requires some serious research in to the particular conditions in the license agreement.

https://developers.google.com/maps/terms

http://www.google.com/permissions/geoguidelines.html

7.5  (Re) use of your own material

A large amount of the material used in weblectures is made by the teacher. You make videos photographs, sound recordings, text etc. One would expect that from a copyright perspective the use of this material should be straightforward. But there are some issues worth considering.

First of all there is the question: who is the maker of the photo or film or text. The principle is that the owner of the work is its creator. However the owner can sometimes be the employer. It depends mainly on how the work was produced, i.e. if the work was part of the duties of the employment, realized with its means.
In the UK, the general rule is that the employer is the owner of the work if it is produced in the course of the employment. In other EU countries, the rule is for most of them the contrary, i.e. the employee is the owner of the work even made for the employment's duties, unless otherwise specified in the contract. Thus, in those countries, the employment contract must specify that the work created by an employee is owned by the employer. Anyway, in most cases, the employee will keep moral rights on his creation.

But the rule is sometimes quite different for academics in higher education, e.g., Spain and France. For them, when they create a work for educational purposes under university and with its means, the work will belong to the university. Moreover, moral rights can be strongly diminished.

In the Netherlands, there are different rules for scholars and other teachers. Scholars are accepted from this rule to guarantee their scientific independence. Other teachers outside should be aware that their employer can be the copyright owner.

Secondly and very important is the question: what can you film or photograph. The rules for taking images, filming, or photographing are basically the same. If we can see or/and hear people on the recording, you must pay attention to get the visible persons’ permission to take and to publish their images (see Error! Reference source not found. person’s image).

7.6 Using student material

Student participation can mean that they are actually contributing to the content of a web lecture. Students are of course creators too in the sense of copyright law, if they fulfill the requirement of copyright (mainly creative work). In the case study 'Rome in the film, film in Rome' student were invited to upload their own content (Film, pictures, text). The content was published in a closed learning environment to contribute to a web lecture. Student generated content can be an essential part of the published web lecture. It is essential to have permission to use the content. A written or online license for the content should be part of the assignments instructions.

8. The right to a person’s image

The right to a person’s image is the right someone possesses on the reproduction or the use of its own image. It can affect you since in photos or films you could take for your course, there can be various people appearing. In this domain, solutions depend mainly between common law countries (UK, Ireland), and civil law countries (e.g., France, Belgium, Spain). Finally, we will assess whether a right to image is also vested in objects.

8.1 Common law

There is no real right to a person’s image in common law countries. UK law doesn’t recognize a person’s right to her/his image. It means that one is allowed to take a photo of someone without that person’s permission. However, a right to privacy exists in common law systems. It can influence the right to a person’s image since it gives the person the right not to have his image issued or communicated to the public, but it is quite narrow. Moreover, the right to privacy, linked to the European human right to a personal and family life won’t prevent from filming in a public place, including a classroom.

Common law will rather protect the right not to have your image used for commercial purposes. It is the right of publicity that is the right of an individual to control the commercial use of his or her name, image, likeness,
or other unequivocal aspects of one's identity. In UK is it is protected by an action against “passing off”, which is the infringement of the right of publicity. In fact it concerns mainly a well-known person whose image will be used to promote a brand. Thereby you must pay attention if you use a person's image in a film, not to use it as an “advertisement” for your course.

8.2 Civil law

In civil law countries, there exists a more complete, and therefore complicated, right to a person’s image.

On one hand, generally anyone can oppose to be caught on camera. It means you must always get one’s consent before taking a photo of him. However in certain circumstances, when you are clearly taking a photo or a video of someone and this person does not react, i.e. he does not form any opposition, you can consider that he has given his tacit consent.

On the other hand it is also illegal to use somebody’s image or likeness without his permission. The simple fact that the image of the person was reproduced without his/her consent is illegal.

But what is the solution if the photo is taken in a public place? The right to a person’s image lasts. One can oppose to the use of one’s image even if it is taken in a public space. But since this rule would be too strict to apply, there are leniencies. Conveniently if your image is taken in a crowd and it is impossible to recognize you, your right cannot apply. On the contrary if in a photo or a film you can clearly see the face of someone (i.e. this person figures clearly at the forefront of the image), you must get the permission of the person concerned to take and use the photo/film.

Moreover there is another exception which applies when it is the image of somebody of public relevance or who holds a public position and his image was taken in a public event, or if it is public or trivial facts. Thus, you don’t need those persons’ permission to use their image, as long as it was taken in a public setting, because there is still of right to privacy, and of course the image cannot be used for commercial purposes without consent. This exception allows respecting the freedom of expression and communication which is a European fundamental law.

In conclusion, since the right to a person’s image exists in most of European countries, you must pay attention to obtain the permission of every person likely to be visible on a recording, to avoid any dispute in the future.

Filming or photographing someone also qualifies as the “processing of personal data” under the European Directive 95/46/EC, which also states that permission from the person concerned is required. However, universities could arguably benefit from one of the exceptions to this rule, the result being that no permission is needed in some cases. If filming someone, e.g. in the course of a lecture capture, would be necessary for the purposes of the legitimate interests of the university or the recipients (e.g. the making available of course materials to students, including to students who are not able to physically attend one or more classes) and such interests would not be overridden by the interests or fundamental rights and freedoms of the people being filmed, the filming would be allowed despite the absence of permission. In any case, it would be advisable not to disseminate such videos outside the university (but only upload them e.g. on the closed university intranet or blackboard), in order to protect the fundamental rights and freedoms of the persons being filmed.

You could try to rely on this Directive if you want to avoid the authorization for the use of an individual’s image, but you must be aware that it can have different interpretations from a country to another, and the safest stay to ask permission in the first place.
8.3 Is there a right to image vested in objects?

In other words, how does it affect the owner if you take a photo of something that belongs to him?

There is not strictly speaking a right to an object’s image. The simple fact of fixing the image of someone’s property is not as such illegal. But in one hand it can be an infringement to the right of private life, if it shows something intimate. Similarly, you would have to get the owner’s permission (under Directive 95/46/EC, mentioned above) if the image of the object were to convey any information relating to him/her making him/her identifiable. On the other hand if the thing is protected by copyright, taking a photo or making a film of the creative work is not a problem. However you must pay attention to the way you use it. Indeed there can be infringement to copyright if you communicate the photo, especially when you did not take the photo with the work of art as a background, but it is really framed on the work of art itself.

9. Audio and video materials

Audio and video materials, whether they are publicly broadcast materials or commercially produced materials distributed on cassette, CD or DVD, are subject to a number of restrictions.

9.1 Commercially produced audio and video materials

Unauthorised copying of commercially produced audio or video materials is generally not allowed. Some publishers give blank permission for making copies within a non-commercial educational environment, and others sell licences that permit copies to be made for students’ use, but making copies of commercially produced audio and video materials and passing them on to third parties normally constitutes a serious infringement of copyright. Even transferring audio and video materials from one format to another may not be permitted, e.g. from cassette to CD-ROM or DVD, or into MP3 or MP4 format so that the materials can be played on a PC. Some publishers are, however, becoming more liberal in this respect. This is the actual wording on the packaging of a recently produced set of audio CDs:

This set of CDs is for your individual use only. You are legally entitled to rip/copy the content of these CDs to your own PC hard drive and/or MP3 player. Please note that it is illegal to:

- Make copies of these CDs;
- Rip/copy the content of these CDs to PC hard drives and/or MP3 players owned by others.

Look at the terms and conditions on the packaging of purchased audio or video materials or in accompanying documentation. If the terms and conditions do not state explicitly that you are allowed to transfer recordings from one medium to another then you must apply for permission to do so from the publisher.

Above all, never make commercially produced recordings available on an institutional intranet or on a public website unless you have explicit permission to do so, as this constitutes communication to the public, which is a term used in recent copyright legislation. Communicating an author’s work to the public without permission is illegal.

But you can sometimes benefit from the exception for educational purposes (see: General Rules of using copyrighted material and referring to copyrighted material in a web lecture).
9.2 Public screening of video materials

Most commercially produced DVDs and videocassettes carry a warning indicating that they can only be used for private and not public screening. DVDs or videocassettes shown in educational institutions for the purposes of "instruction" are normally not considered as public screenings, so they can be shown if they are used for teaching rather than for "entertainment".

Essentially, you need a Public Video Screening Licence (PVSL) to show films for entertainment purposes, but if a film is shown as part of the curriculum it does not require a copyright licence. The PVSL does not allow for screenings for commercial or money-making purposes, but such licences can be purchased from Film bank.

Bear in mind that the PVSL only covers your school's staff and students. If guests are invited to a screening then you need to purchase a Single Title Screening Licence (STSL). Although there is usually a clear distinction between screening for "entertainment" and screening for "instruction", it may be advisable for an educational institution to purchase a PVSL in order to cover all eventualities.

9.3 Making audio and video materials public

The next time you watch a feature film or a documentary on TV, look at the credits and acknowledgements at the end. You will find that the source of every piece of music that has been played, every song that has been sung and every video clip that has been shown in the film is documented.

This means that the production company has sought permission for the music to be played, the songs to be sung and the video clips to be shown, and has probably paid a fee to the copyright owners. You have to do the same if you are making other people's audio and video materials public in any way, especially via the Internet, including educational intranets and VLEs.

There are no special concessions for education, and it makes no difference whether you are making the resources public in order to share the resources free of charge or for commercial gain. The main problem with broadcast material is that the broadcaster may not actually own the rights to it and therefore cannot give permission to someone else to disseminate it further. Let us consider the following scenario: You decide to produce a set of materials on watching TV news broadcasts for students of a foreign language. The materials are to consist of transcripts, worksheets, and language notes, vocab lists, accompanied by video recordings of authentic news broadcasts. You find a publisher who is willing to publish the materials and set about recording suitable news broadcasts and producing the transcripts, etc. You send the recordings and the first drafts of the accompanying materials to the publisher. The publisher immediately asks you to confirm that you have sought permission from the appropriate sources to disseminate the video recordings, to make the transcripts, etc. You haven't, so you immediately set about this task. You approach one of the TV companies that broadcast one of the news items. The TV Company refers you to a news agency that sold them the rights to broadcast the item, pointing out that such rights had a limited time span, e.g. the TV Company was only allowed to broadcast the item a certain number of times in the course of one week when it was hot news.

You approach the news agency, and they refer you to a freelance team that has produced the film - and so on.

You realise at this point that you are wasting your time. A more sensible approach is to write to a TV company asking them for permission to use a selection of broadcasts in which they have copyright and to restrict yourself to these materials. In other words, it makes more sense to work the other way round: find out what you are allowed to use first rather than leaping in blindly and getting in a mess over copyright.
9.4 Filming, Photographing or recording your lecture

A lecture can consist of a combination of spoken word, displayed text, pictures, movies and interaction with an audience in a classroom.

Spoken word is protected by copyright if they form an original work. So when you record a lecture given by yourself you might have copyright. In a lot of cases your employer will have copyright though. But it is important to realize the words you spoke can be copyright protected.

To make a recording of a guest speaker you first need to get this person’s permission to be filmed, and then need permission to publish it later. It’s a good idea to ask for a written non-exclusive license to publish. You can use the Creative Commons license. It’s advisable to use a broad license that makes all sorts of future use possible.

When filming a (participating) audience you ideally should ask individuals permission prior to recording them. Especially when they participate or ask questions, since they will be part of the video with their voice and their image. In practice this will be very difficult. But with a simple sign or announcement before the start of the lecture you can inform the audience that the lecture is going to be filmed (and broadcasted). People who object to being filmed can then find a “safe” place or you can edit them out.

When filming or recording a lecture, discussion or webinar one should always consider how the recording is going to be published in the future. One should make sure there is permission to use all the copyrighted material included in the filmed lecture: text, pictures, movies etc. Don’t assume that because the material is allowed to be used in a class room or an enclosed digital learning environment it can be published on the Internet. Check the material and make sure you have the right to use it or record it.

Interviewing people serves very little purpose unless the interviews become available for use. It is unethical, and in many cases illegal, to use interviews without the informed consent of the interviewee, in which the nature of the use or uses is clear and explicit.

When an interview is recorded, separate copyrights exist in the words spoken (if they fulfil copyright requirement) and the recording itself. Initially, the owner of the copyright in the words spoken is the speaker, while the copyright in the recording belongs to the person or organisation which arranged for the recording to be made. UK copyright law already covers these issues, so the default situation is that the speaker initially has the right to determine what is done with his/her recording.

9.5 What about YouTube?

Many teachers regularly use YouTube video clips for teaching, especially by downloading and converting YouTube clips for use offline. But caution is advised. There may be special concessions regarding the use of video clips for educational purposes but don’t assume that such concessions are automatic.

Since its inception YouTube has become an increasingly valuable resource for teachers, but it has often become embroiled in copyright disputes. Thousands of YouTube clips breach copyright, but many copyright owners, musicians, actors and film makers don’t worry about their clips breaching copyright. They regard it as good publicity, and in any case the jerky, grainy YouTube clips are a poor substitute for the original high-quality videos that are available commercially.

YouTube places the onus on people who post video clips to the YouTube site to honour copyright and removes clips as soon as they become aware of a possible breach of copyright - which usually satisfies the owner.
Don’t be tempted to put downloaded YouTube clips on your own website, blog, wiki or VLE as this is in breach of copyright and you don’t have YouTube’s money to fight legal cases! Similarly, be wary of downloading video clips from the Dailymotion site and uploading them to your own website, blog, wiki or VLE. But you can sometimes benefit from the exception to copyright (see General Rules of using copyrighted material and referring to copyrighted material in a web lecture).

You should always check the Terms of Use that a website imposes.

10. Protecting resources that you have created

At first sight copyright legislation may appear to subjecting you to all kinds of restrictions, but remember its main function is to protect authors against unfair exploitation of their work, and in many respects teachers are authors too.

10.1 Economic rights

Schoolteachers and university lecturers typically produce the following types of materials:

- Printed hand-outs for students
- PowerPoint presentations
- Multimedia learning materials
- Materials for institutional intranets, VLEs and websites
- Articles, monographs
- Textbooks and accompanying materials

It can be argued that teachers are expected to create teaching materials as part of their job, and so copyright in such materials belongs to their educational institution, but this is not clear-cut and you should look carefully at your contract of employment. For example, the writing of a textbook is not an essential component of the contract of employment of teaching staff. Therefore, copyright in textbooks clearly initially belongs to the member of staff. The same rule may also apply to teachers’ personal blogs, wikis and websites.

10.2 Moral rights of the author

In any legislation you will find beside economics rights, moral rights of the author. However these rights can differ between the countries.

The main moral rights of the author are:

- **Paternity right, or right of attribution**: your right to be identified as the creator of a work. You may need to assert this right, especially if you are producing a publication for a third party, e.g. an educational institution or a government agency. However in this situation in some countries the author keeps his right to paternity (e.g. France)
- **Right of integrity, or Right to object to derogatory treatment**: the right to object to any distortion, mutilation or other modification of, or other derogatory action which would be prejudicial to the honour or reputation of the author
- **Right to object to false attribution** (only in common law) : allows individuals to avoid being named on works they are not the author of; it lasts 20 years after death of the person falsely attributed with copyright

Moreover some countries have a broader conception of moral rights:
• **Right of divulgation**: the right to decide to make the work public

• **Right of withdrawal** (e.g. France, Spain): the right to take the work out of the economic circuit (lasts until the death of the author), an author has the right to request his work to be withdrawn from circulation, in exchange for compensation for persons involved in its distribution

**Using third-party materials**: Unless every single aspect of the materials you produce has been designed and created by yourself, other copyright owners (third-parties) may also have a stake in what you produce. This is especially likely in the case of authentic texts, authentic audio and video recordings, and images. See:

For printed materials, your institution’s CLA licence is likely to cover your requirements if your materials are used only in-house. Audio and video recordings, however, are subject to a host of rights: If you are in any doubt about how you are allowed to make use of audio and video recordings you should contact the publisher of the item in question if it is a commercial product, or the broadcasting company in the case of a broadcast item.

### 11. Advices

#### 11.1 Podcast (Creation)

Two types of rights are likely to be vested in pre-existing material:

On the one hand, the rights may be the Intellectual Property Right. These include the copyright and the right of performers. These rights regimes are relatively close. Unless otherwise stated, the rules of copyright law will apply to performers. When we specify the rules differ. Producers can also benefit from a specific intellectual property right. One the other hand, these rights may be right in the image of the people represented in the podcast.

Thus, you must attach to respect intellectual property rights and the image images which may relate to the content that you include in a podcast. But you are not only required to respect the rights of others, you can also benefit from certain rights to the podcast.

Protection is not automatic, it should verify the existence, for your benefit, of an intellectual property before specifying the effects.

#### 11.2 Recording lectures

**Think legal from the start** to be confident in compliance. Copyright, performers’ rights, data protection (included right to image), and accessibility are the main areas of law you need to consider.

**Check who owns the content** of the lecture being recorded. Making a recording is further copying and as such there is unlikely to be automatic permission. The owner could be the institution, or the presenter (a lecturer, a guest speaker or student).

**Encourage permitted use of open licensed materials**, e.g. video clip with a liberal CC licence, to avoid copyright difficulties.

**Consider learners**, and respect the choices given to them by law. Do they want to be on camera? Consider providing an area of the audience, or a section of the presentation which won’t be recorded.

**Get permissions** to record and to use for your post-recording use. Get the permission of the performers and the third party copyright owners where needed.

**Think about legal considerations** as part of the editing process. Minimise institutional risk of liability for inappropriate personal or infringing content.

**Remember to embed accessibility** – as required by law. The recording should be accessible to all students of the university, as far as is reasonable given the circumstances. This might mean being proactive in captioning, providing a transcript, and the availability of the recording in different formats.
Consult, involve and inform staff early to ensure buy-in of staff and institution-wide consistent good practice. Don’t spoil hard work with legal uncertainty.
12. Bibliography


Université du numérique, espace juridique : http://www.universites-numeriques.fr/fr/content/quest-ce-que-une-%C5%A9uvre-prot%C3%A9g%C3%A9e-par-le-droit-dauteur


13. References for further information

- Centre for Education and Finance Management (CEFM): A body that handles Performing Right Society (PRS) licences and Public Video Screening Licences (PVSL) for schools.
- Christian Copyright Licensing International (CCLI) was established in 1988 to provide a copyright solution for churches wanting to reproduce the words of hymns and worship songs for their times of worship. As churches began to adopt new technology into their activities CCLI responded to their needs and began to provide copyright cover to show films, play or perform music, record services, photocopy from authorised publications and now, with the increased usage of the Internet, legally download song lyrics and music.
- Copyright Licensing Agency (CLA): See this site for advice and licences relating to copying printed materials.
- Copyright and Related Rights Regulations 2003 (UK)
- CopyWatch: The compliance arm of the Copyright Licensing Agency (CLA).
- Creative Commons: An alternative approach to copyright licensing, whereby the author of a work may offer some of his/her rights to members of the public, but only on certain conditions. For example, the author may allow others to copy, distribute, display, and perform a copyrighted work - and derivative works (adaptations) based upon it - but only if they give credit the way in which the author requests and do not exploit the work commercially. Most of the materials stored at the ICT4LT site are subject to a Creative Commons Licence - see our own copyright notice at the foot of this page. This slideshow presentation by Rodd Lucier gives a good explanation of what Creative Commons is all about: Creative Commons: what every educator needs to know. This video tells the story of a photographer who learns to use both Copyright and Creative Commons to accomplish her goals: Copyright and Creative Commons Explained by Common Craft.
• **DACS**: The Design and Artists’ Copyright Society. Established by artists for artists, DACS is a not-for-profit visual arts rights management organisation. DACS translates rights into revenues and recognition for a wide spectrum of visual artists.


• **Educational Recording Agency (ERA)**: ERA operates a licensing scheme for educational use of copyright material. Uniquely serving the UK educational sector, ERA is one of a range of collecting societies which help copyright owners and performers derive an income from the licensed use of their literary, dramatic, musical and artistic works.

• **FAST (Federation Against Software Theft) and Investors in Software**

• **Filmbank**: Filmbank licenses films and TV programmes to many organisations and groups; schools, churches, trains, hotels, hospitals, film societies and other "out of home" venues. See Section 6.3 (above).

• **Guide toCopyright Licensing in Schools**: This website helps teachers to identify school activities that may need to be covered by a licence. There are links to the websites of the appropriate organisations that need to be contacted for further information and advice.

• **IALLT (International Association for Language Learning Technology)**: A very useful document on Legal Issues and Language Technology has been produced by IALLT. IALLT is based in the USA but many of the key principles and issues apply internationally.

• **Intellectual Property Office (UK)**: A comprehensive source of information on Intellectual Property Rights (IPR): http://www.ipo.gov.uk

• **JISC (Joint Information Systems Committee) Legal Information Service**

• **Motion Picture Licensing Corporation (MPLC)**: This website covers licences for the public showing of DVDs. See Section 6.3 (above).

• **The Open University**: Contact The Open University for information on copyright relating to OU broadcasts.

• **Oppenheim C. (2004)**: Recent changes to copyright law and the implications for FE and HE, JISC Legal Information Service.

• **The Oral History Society**: Useful advice on making, storing and disseminating recorded interviews.

• **Ordnance Survey (OS)**: See this website regarding the copying of maps.

• **Newspaper Licensing Agency**: See this site for advice and licences relating to newspaper materials.

• **Phonographic Performance Limited (PPL)**: PPL licenses recorded music played in public or broadcast and then distributes the licence fees to its performer and rights holder members. If you play recorded music or music videos in public, you will almost certainly be legally required to have a PPL licence.

• **Performing Right Society (PRS) for Music**: Consult this site for information relating to the performance, broadcasting and digital dissemination of music.

• **Song Bank**: A useful resource for teachers wishing to use music in class. Contains recordings of song and advice on copyright where relevant.

• **Teaching Copyright**: This is written in the form of a set of FAQs and tutorials for students. It applies to USA legislation but a good deal is relevant to the UK and other countries too.

• **Brad Templeton**: Brad Templeton is based in the USA, but he covers general and international copyright issues too:

  - A brief intro to copyright
  - 10 Big Myths about copyright explained
  - What is Copyright Protection? This website is very useful in explaining copyright in simple terms.
14. Annex: World Café discussion statements - Table C: Intellectual Property Rights and Copyright issues

Some statements have been discussed at the table on Intellectual Property Rights and Copyright issues during the world café discussion at the table intellectual at the RE:call Lecture Capture Workshop 2013.

A short summary of these discussions has been done in this annex.

14.1 A teacher has the right to upload a recording of his lecture, produced with the means of his university, to YouTube.

In most European countries it depends on what the employment contract states. Most of the times there is clause which explicitly provides that every work produced for the employment’s duties within its framework is the property of the employer. So in this case the ownership would goes to the university. Otherwise the author stays the work’s owner. The problem is that the right of disclosure belongs to the owner, therefore the only person who has the right to decide where the work is broadcasted is the owner, and if it is the university the teacher can’t upload the video to Youtube.

In United Kingdom, Ireland and France the work would directly belong to the employer. In common law there is an automatic transfer of the rights from the employee to the employer, and in France it only concerns teachers. So in these countries only the university would have the right to upload to YouTube.

14.2 When a teacher makes his self-made course video available on the University’s Virtual Learning Platform, colleagues are free to use this it.

The issue also depends and whether the work is the teacher of the university’ property. In this case since it a self-made video it must be the teacher’s property.

The fact to use the video in a course is an act of representation to the public, i.e. communication of the work to the public by any process. Yet communicate to the public without the owner’s consent is illegal. So make available the video on the university’s closed internal space is an act of communication to the public, but use it during a course is another one (moreover if it is in a classroom or an lecture hall it is a public space). Thus colleagues must ask the teacher’s consent before.

To use the pedagogical exception, colleagues would have to broadcast only an extract.

14.3 A University is allowed to make recordings of lectures available to students without prior authorisation of the lecturers in the video.

It depends whether the lecture are the university’s teachers or are external.
The issue lies on 2 different rights.

About the author right: if the teachers come from the university they lose their rights on the video (see above); it the lecturers are externals they have a right on the spoken words, you must ask for their authorization.

About the right to image: you must ask for the lecturers to film and use the video. But for the internal teachers, their image could be a personal data, so you could use it without authorization when it is for a mission of general interest (directive 95/46/EC), for internal use.

14.4 A teacher records an interview with some of his students in the classroom, he asks for permission to film and use the image only from interviewees.

You must respect the right to image. Therefore you must ask permission to film and to use the video from everyone who is on the video. But you can be exempted from asking authorization from the students who are on the background, if you can’t recognize them, i.e. they are not identifiable.

Under data protection legislation (directive 95/46/EC), you would also need consent of the students being filmed (except to the extent that the interview could be considered necessary for the execution of the contract between the university and the students, or could be considered necessary for the legitimate interests of the university/its students; see earlier).

14.5 When I use third-party audio visual material in my PowerPoint Presentation I am allowed to make it available on the University’s closed internal space.

You can benefit from the exception for educational purposes, but there are several terms: the name and the source must be quoted, it must be an extract, the work must have a link with the context in which it is quoted, and it must be seen mainly by students or teachers. Moreover the authors are entitled to compensation from the university. So if these requirements are fulfilled it is possible to make the document available on the university’s closed internal web space since it is seen mainly by students and teachers.

14.6 When I use a 5 seconds fragment of a video in my lecture, I am allowed to do so without asking permission to the owners.

Two exceptions to copyright could apply: citation and educational use. It is allowed to put a work’s extract if the extract has a link with the document which contains the work (exception for short citation). Citation (use of a short extract) is allowed if it is in conformity with the “honest professional practices” and if it is justified by a legitimate objective (which will usually be the case if it is done with a view to the instruction of students and the building of their knowledge). No compensation will be due for the mere citation of a work.