



How to move beyond lecture capture: *Legal guide*

G rard Casanova & Yacine Abboud

Draft version November 2012

1. TABLE OF CONTENTS

2. Foreword	2
3. The REC:all project.....	2
1. Aims of REC:all.....	2
2. Partnership.....	2
3. Why this is a 'draft' guide.....	2
4. Scenarios.....	3
1. Podcast (Creation)	3
5. What is copyright?.....	3
6. European legislation	4
1. UK Copyright legislation	4
2. French legislation	4
7. The Internet	5
8. Audio and video materials	6
1. Commercially produced audio and video materials.....	6
2. Public screening of video materials.....	7
3. Making audio and video materials public.....	7
4. Making audio and video recordings of interviews with people	8
5. So what about YouTube?.....	8
9. Protecting resources that you have created.....	8
10. References for further information	9

2. FOREWORD

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

3. THE REC:ALL PROJECT

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

1. AIMS OF REC:ALL

REC:all is initially researching how lectures are currently being captured and used, exploring learning designs for flexible and off-campus delivery, reviewing technical, pedagogical and legal issues with an aim to producing practical guidelines such as this one to help teachers. The project has 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 is testing a range of lecture capture 'cases' as carefully selected mini-projects. The projects will be fully evaluated with a focus on student feedback. The aim is to develop transferable and tested pedagogical models, reference descriptions and benchmarks of good practice. These will be 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.

2. PARTNERSHIP

The REC:all partnership consists of:

- University College London (UK) - Project Leader
- ATiT (Belgium)
- Université de Lorraine (France)
- Vrije Universiteit Amsterdam (Netherlands)
- Universitat Politecnica de Valencia (Spain)

3. WHY THIS IS A 'DRAFT' GUIDE

How to move beyond lecture capture: legal guide is one of the early outputs of the REC:all project and has been developed and is released in draft form to engage and stimulate discussion. It will be augmented with this feedback and scenarios from each partner showing how to respect the legal aspect in few examples and released in a final format in the summer of 2013.

4. SCENARIOS

Those scenarios are made to give a legal guide in several common use of lecture capture. The first scenario is about podcast's creation.

1. PODCAST (CREATION)

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

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 right image which may relate to the content that you include in a podcast.

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.

5. WHAT IS COPYRIGHT?

Basically, copyright hinges on the question of ownership 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 for 70 years after the death of the creator - 50 years in the case of audio and video recordings, audio and video broadcasts, and computer-generated works. 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.

6. EUROPEAN LEGISLATION

1. UK COPYRIGHT LEGISLATION

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
- The Internet
- 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>

2. FRENCH LEGISLATION

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 benefice 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 rights to the editor or the producer.

Copyright requires a material fixation of the work, as for example a speech or a choreography work, although it is an intellectual work (an œuvre de l'esprit), they will not be protected if they are not embodied in a material support. Such requirement does not exist under the droit d'auteur.

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 (i.e., an author has the right to request his work to be withdrawn from circulation in exchange for compensation from those persons involved in its distribution who would moreover enjoy the

right of priority in the event of the said work being redistributed). This right is attached to the author; it is inalienable and transmissible at the death of the author.

7. THE INTERNET

It is most important to bear 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, where there are substantial concessions for education, e.g. as embodied in the terms of the Copyright Licensing Agency (CLA) and the Educational Recording Agency (ERA). Publishing on the Web is also quite different from publishing in other media: see Casey (2004), which is a useful guide for anyone wishing to develop Web materials.

All materials published on the Web (texts, images, audio files and video files) are 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 simply to 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 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. If a work is in the public domain this means that it is not subject to copyright law, for example because the owner of the work has relinquished copyright on the work and has explicitly stated so, or because the owner of the work has been dead for over 70 years - 50 years 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, and then the terms of using such materials are much more liberal. Look for a clear statement saying "The materials on this website are in the public domain" or something similar.

Check the Terms of Use

If you wish to use materials from someone else's website, check the **Terms of Use**, (also known as **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.

Creative Commons Licences

A **Creative Commons license** is one of several copyright licenses that allow the distribution of copyrighted works. A Creative Commons license is used when an author wants to give people the right to share, use, and even build upon a work that they have created. CC provides an author flexibility (for example, you might choose to allow only non-commercial uses of their own work) and protects the people who use or redistribute an author's work, so they don't have to worry about copyright infringement, as long as they abide by the conditions the author has specified.

The original set of licenses all grant the "baseline rights", such as the right to distribute the copyrighted work worldwide, without changes, at no charge. The details of each of these licenses depends on the version, and comprises a selection of four conditions:



Attribution (by)

Licenses may copy, distribute, display and perform the work and make derivative works based on it only if they give the author or licensor the credits in the manner specified by these.



Noncommercial (nc)

Licenses may copy, distribute, display, and perform the work and make derivative works based on it only for noncommercial purposes.



No Derivative Works (nd)

Licenses may copy, distribute, display and perform only verbatim copies of the work, not derivative works based on it.



Share-alike (sa)

Licenses may distribute derivative works only under a license identical to the license that governs the original work. (See also copyleft.)

8. 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.

1. COMMERCIALY PRODUCED AUDIO AND VIDEO MATERIALS

Unauthorised copying of **commercially produced audio or video materials** is generally not allowed. Some publishers give blanket 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.

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.

3. MAKING AUDIO AND VIDEO MATERIALS PUBLIC

The next time that 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, 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 news 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.

4. MAKING AUDIO AND VIDEO RECORDINGS OF INTERVIEWS WITH PEOPLE

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 (i) the words spoken and (ii) 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.

5. SO 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 keeps the copyright owner quiet.

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! But linking to a video's URL at the YouTube site or embedding the link code is not likely to be a problem. Similarly, be wary of downloading video clips from the Dailymotion site and uploading them to your own website, blog, wiki or VLE.

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

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

- Printed handouts 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.

Under recent legislation you will find that even as an employee or a freelancer working under a contract where copyright is assigned to a third party, you still have certain **moral rights** with regard to anything you create:

Paternity Right - 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.

Integrity Right - your right not to have your work subjected to derogatory treatment.

False Attribution - your right not to have work falsely attributed to you.

You can also ask for your name to be removed from unapproved versions of your work and to request that a notice be attached stating that the work is being issued against your wishes.

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.

10. REFERENCES FOR FURTHER INFORMATION

- [University of Cambridge, Centre for Applied Research in Educational Technologies \(CARET\)](#): Intellectual Property and Copyright in the Digital Environment.
- **Casey J. (2004):** [Intellectual Property Rights \(IPR\) in networked e-learning: a beginners guide for content developers](#), JISC Legal Information Service.
- [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, Design and Patents Act 1988:** See the [Intellectual Property Office \(IPO\)](#) site.

- [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.
- [Davies G., Bangs P., Frisby R. & Walton E. \(2005 - regularly updated\)](#) Setting up effective digital language laboratories and multimedia ICT suites for Modern Foreign Languages, London: CILT. See the section headed **Copyright issues**.
- [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 to Copyright 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.
-