

# WEB 2.0, CREATIVE COMMONS LICENCES AND ORPHAN WORKS

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# MY ASSUMPTIONS

- That you are familiar with the basics of copyright
- But you are interested in its impact on some recent developments in technology
- And in the impact of those recent developments on copyright law

# WHAT IS WEB 2.0?

- The term is associated with web applications that facilitate interactive information sharing, interoperability, user-centered design and collaboration on the Web. Examples of applications include social networking sites, web based communities, video sharing sites, wikis, blogs, mashups and folksonomies.
- A Web 2.0 site allows its users to interact with other users.
- Does not involve an update to Web technical specifications, but rather in the way Web technology is used.
- Tim Berners-Lee calls the term “a piece of jargon”!
- (Thanks to Wikipedia)

# A FUNDAMENTAL POINT

- Web 2.0 has certain unusual features which make for copyright problems
- Firstly, it involves multiple collaborative players
- It is often international
- Finally, few of the people involved know about, or care about the law
- And some have contempt for it!
- In other words.....



# JOINTLY OWNED?

- Copyright in a work is jointly owned when more than one person has collaborated in the work's creation and it is impossible or difficult to distinguish who contributed what
- E mail thread MIGHT be jointly owned
- Many Web 2.0 outputs are definitely jointly owned
- Problem is, when jointly owned, every joint owner has to agree, e.g., on licensing the outputs – any one of them has a veto; and no reply to a request = a veto
- Lifetime of copyright in such works is typically 70 years after the LAST of the joint owners to die
- Best if you had some terms and conditions up front so that any contributor assigns ownership to the lead player – but they might not agree to that!

# WEB 2.0

- Difficulty of policing such sites
- Contempt for copyright amongst many Web 2.0 users
- Vicarious liability - things done by employees/students may have legal repercussions for the employer/institution, who may not have been aware of what was going on (applies to everything, not just Web 2.0)

# MORAL RIGHTS

- Paternity right – must be asserted
- False attribution
- Derogatory treatment
- Moral Rights cannot be assigned, but can be waived
- Very important in Web 2.0 environment – make sure you identify authors, and do not quote them out of context!



# PERFORMERS' RIGHTS

- Includes musical, dances, acting, this talk...
- Must ask permission before making or reproducing copies of the performance
- Many Web 2.0 applications will include recordings of performances, e.g., podcasts

# Web2Rights

- *Remit:* to develop legal resources and guidance to support people in their engagement with Web2.0; go to: [www.web2rights.org.uk](http://www.web2rights.org.uk)
- *Aim:* To make the information relevant by making it practical, pragmatic and timely
- *The team:* me, Naomi Korn, Dr Charlotte Waelde, Dr Neil Witt, Rob Stillwell, Emanuella Giavarra, Derek Stephens
- This was a JISC-funded project, now completed; its web site is strongly recommended as a resource for anyone engaging with copyright issues

# The Toolkit

## BACKGROUND PAPERS

- 1.1 Briefing Paper on Creative Commons Licences
- 1.2 IPR and Web2.0 Factsheet
- 1.3 IPR and Legal Issues Factsheet
- 1.4 FAQs

## POLICY RELATED PAPERS

- 2.1 Draft Institutional IPR Policy Statements
- 2.2 IPR Licensing Blue Print for Funding Bodies and Recipients of Funding

## PRACTICAL TOOLS

- 3.1 Getting Permissions Paper
- 3.2 IPR Risk Assessment
- 3.3 Rights Management
- 3.4 Terminology Toolkit Paper
- 3.5 Top Tips for Issuing Licences
- 3.6 Top Tips for Requesting Licences
- 3.7 IPR Model Consent Form
- 3.8 IPR Model Licence
- 3.9 Template Email Permission Form
- 3.10 Template Permissions Letter

# How can the toolkit help you?

- Help to deal with IPR and Licensing Issues
- Customisation and adaptation of the tools – it is available under a CC licence (I discuss CC in a few minutes)
- Digestible, chunk sized tools and information = choose what you need when you need it
- Tools for LIS staff as well as policy makers
- Guidance about permissions and how to seek them
- Offers informed risk management

# RISK MANAGEMENT

- Be proportionate and pragmatic
  - Reasonable searches
- Strategies should reflect/ be reflected by employer policies
- Educate your users!
- Employ good mitigating strategies if copyright has been infringed:
  - How quickly can the situation be remedied?
    - Don't do nothing!
    - Get claim substantiated
    - Apologise
    - Rapid take down procedure
    - Crediting/payment of royalties
  - Insurance?

# INTRODUCTION TO CC WITH A REMINDER – HOW CAN YOU COPY?

- Make use of one of the **exceptions to copyright**
- Make use of material where the owner has **EXPLICITLY** waived copyright or has given a Creative Commons or similar free licence – discussed later
- **Buy a licence** from the copyright owner, or someone who acts on its behalf

# LICENCES

- Copyright owner, or his/her/its authorised representative (licensor) grants licensee rights to do certain restricted acts
- In return, fees are (often) paid
- Terms and conditions imposed – you must follow them, or you are in breach of the licence and may be infringing
- Indemnity is often provided to you in the paid-for licences
- An example is the CLA HE Photocopying and Scanning Licence, but there are many others.
- One of the most important is Creative Commons.

# CREATIVE COMMONS

- <http://creativecommons.org/> N.B. **NO** “www” at the start of the URL
- You may copy at no charge as long as you attribute creator; may be other limitations – see later
- CC stuff is available for sound effects, music, images, moving images, text.....
- To find the licensed materials, there are (too) MANY sources, including Google, Google Images, Mediahub ([www.jiscmediahub.ac.uk](http://www.jiscmediahub.ac.uk)) - for HEIs and FEIs only - Flickr, YouTube, etc. Much of Google Scholar material is available for re-use under a CC licence
- Also note the many Wikimedia services (including of course Wikipedia) available under CC licences. Go to [www.wikimedia.org](http://www.wikimedia.org) for an overview of the services, or straight to [http://commons.wikimedia.org/wiki/Main\\_Page](http://commons.wikimedia.org/wiki/Main_Page) for its media files that are available under CC.
- Note that not everything in these services is invariably CC licensed – you have to search specifically for such things. Use “advanced search” (or similar) and click on “licensed for reuse” (or similar) and then enter search strategy
- N.B. Some people may be offering something under CC but are not be entitled to – use common sense!



# MAIN CREATIVE COMMONS LICENCE TYPES

- Baseline rights - the right to distribute the copyrighted work worldwide, without changes, at no charge.
- **Attribution (BY):** Licensees 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. This one ALWAYS applies, and may be accompanied by one or more of.....
- **Noncommercial (NC):** Licensees may copy, distribute, display, and perform the work and make derivative works based on it only for non-commercial use
- **No Derivative Works (ND):** Licensees may copy, distribute, display and perform only verbatim copies of the work
- **Sharealike (SA):** Derivative works must be under a licence identical to that of the original work
- There are a few other CC licence types, but these, alone or in combination, are the ones you are most likely to encounter

# SUMMING UP ON CC

- Extremely useful to use CC licensed materials in presentations or for other purposes – as I have done!
- Do consider making your own outputs available under a CC licence; the CC web site tells you how to do it
- Almost certainly your, and others' repository content are available under a CC licence

# ORPHAN WORKS

- Anything that is in copyright but you cannot identify or trace the owner, so cannot get permission to copy/perform
- It's a BIG and increasing problem
- Likely solution is licences with funds being put in a pot for rights holders to claim
- EU has issued a draft Directive along these lines but it only covers text and may not get passed; maybe Hargreaves will deliver earlier? (covered in detail in a later Webinar, but we will look at its proposals for orphan works in a minute)



# DRAFT DIRECTIVE ON ORPHAN WORKS

- The Draft Directive covers only a limited number of media, primarily literary works and films.
- Definition of orphan works very restrictive.
- Therefore, in its present form it is doubtful that the Draft Directive is of any value to large-scale digitisation projects.
- The majority of works would only be able to be digitised and made available to the public if the rights to do so are acquired for each work from each individual rightsholder in the work on an individual basis, or if the digitisation projects take the risk of infringement actions from owners of rights of orphan works.
- Draft Directive currently under scrutiny and may well end up very different – or might vanish!

# HARGREAVES' PROPOSALS

- New exception for orphan works for non-commercial use, with licensing bodies to administer (perhaps Copyright Tribunal)
- Reduce lifetime of copyright for unpublished or anonymous/pseudonymous works to life of author plus 70 years, or 70 years from date of creation
- Use a diligent search – but not clear what the criteria for such a search will be
- Not clear what happens if someone comes out the woodwork after a while – can they stop further copying? Can they insist copies made are deleted?

# MORE.....

- Possible Extended Collective Licensing schemes, so that collecting societies covering a majority of rightsholders in their media can offer licences for copying materials not currently in their repertoire
- This could potentially include orphan works of course

# FINALLY

- IPO to develop plans for a “copyright opinions service” in early 2012, for (anyone/only educational institutions?) worried that they might be infringing
- White Paper with proposed legislation in “Spring 2012” – yeah, right – it will be much later than that, and Orphan Works may or may not be covered in the end, because photographers don’t like orphan works bit of Hargreaves