

What are the IP issues? Who might be able to help with these issues? What kind of workflows might catch and resolve these issues?

Case Study 1: An academic from the US gives a lecture at your institution on the poetry of W H Auden. You video the lecture (including the academic's slides) and place it on your VLE so that students who could not attend are able to see it. It proves to be very popular, and the academic provides a set of written materials to go with the recording. The written materials were written by the academic as part of their work at their US home institution, but seem to contain substantial quotations from works by living authors. When asked about this, the academic says that he has been told by his institution's lawyers that the quotations do not require clearance from the authors as they are covered by Fair Use. While this is being discussed, it is suggested that the video and written materials might make a useful addition to your OER repository, and you are encouraged to do whatever is necessary to release the videos and written material under a Creative Commons Attribution-ShareAlike 2.0 England & Wales licence.

Issues for Case Study 1:

Who owns the recording and the slides - the US lecturer or the institution? Check the institution's IPR policy.

'Fair use' is relevant in the USA so you need to check 'fair dealing' (UK equivalent) exceptions in the Copyright, Designs and Patents Act 1988 and subsequent amendments.

If you wish to release materials under a CC licence you will require permission from the copyright owner of the recording of the lecture, the copyright owner of the slides and the copyright owners of the works by living authors (authors/publishers).

Case Study 2: A contractor is engaged by your institution to create learning materials for a course on Adobe Photoshop CS5. The resulting materials include written notes, a screencast with a voice-over by the contractor and sections from a book on the software written by the contractor and her husband. Once the materials have been delivered and the contractor paid, it emerges that no written contract was ever signed. The course proves to be popular but it is frequently pointed out that the screencasts are not as accessible as they could be. A helpful student emails you transcriptions of the spoken parts to be added as subtitles. These are added to the screencasts. All the resulting learning materials are then slated to go into your OER repository under a Creative Commons Attribution-NonCommercial-ShareAlike 2.0 England & Wales licence. A month later the contractor contacts you to say that she is going to include some material from the course in the new edition of her and her husband's book on Photoshop.

Issues for Case Study 2:

The copyright in the materials remains with the contractor because no contract was ever signed for the work.

You can't reproduce screenshots or screencasts of software without permission.

Reproducing sections from a book written by the contractor will be an issue – do you have the permission of the copyright owner (establish who the copyright owner is)?

The transcriptions are 'derived works' (US term but illustrative) and should not be incorporated if the institution does not own the original material.

The materials cannot be released under a CC licence without the permission of all the copyright holders (contractor, software company, publisher).

Case Study 3: As a joint project between Oxford and Cambridge a Political Studies blogging site is set up on a third party hosting facility. The design team for the site create a logo to reflect the collaborative nature of the site: the two university crests merged into a single crest by taking the right half of one and the left half of the other. The aim is for contributions to the site – both the blogs themselves and any additional comments - to be available under a Creative Commons Attribution-ShareAlike 2.0 England & Wales licence. Several blogging contributors are keen to post material that is taken from articles they have already published. Some others want to post material which will be published in the future in journals. One wants to reproduce a Newsweek article that criticises the Barack Obama entry from Wikipedia (and uses extensive quotes from Wikipedia) and to make their own inline comments on it. As a high-profile launch post, the site obtains a contribution from Tony Benn which describes Tony Blair as a war criminal. After a few months the site has received some coverage in the broadsheets and some posts are reproduced in an activist newsletter with attribution but with substantial changes that alter the nature of the arguments made by the original contributors.

Issues for Case Study 3:

The new logo should be removed as it is misuse of University trademarks. Always follow University guidelines when using logos, crests etc. (This is a policy rather than IPR issue)
If material has been previously published elsewhere you need to be clear who owns the copyright before using it.

If material from the blog is to be published elsewhere it will have to be under the same CC licence (Attribution Share Alike).

The Newsweek article ought to be Sharealike and therefore potentially reusable as it reuses substantial sections from Wikipedia with Sharealike requirements.

Material from Wikipedia can be reused as it uses the same CC licence as the blog (as long as the creator is attributed).

The post from Tony Benn should not be used if it is defamatory.

Altering the nature of the arguments in the original posts is against the moral rights of the original author – you cannot subject the original material to derogatory treatment. Creative Commons licences also explicitly require behaviour in accordance with the preservation of an author's moral rights.