Using 3rd party images in teaching and learning materials

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# Executive Summary

The purpose of this document is to provide non-legal guidance around the use of images, when used in online & face-to-face teaching and learning materials. This document sets out the best practices that should be employed. Below is a summary of key points that are found within this document.

* Before considering using one of the UK copyright exceptions, the following best practice(s) should be employed:
  + Locate copyright free online sources for images using [the list](https://edshare.gla.ac.uk/id/document/6902) of online copyright free sources for images, audio, and video
  + Make use of images, where the copyright has expired, and they have entered the public domain.
  + Use images (materials), that have a [Creative Commons](https://creativecommons.org/licenses/) (CC) licence associated with them. As this suite of licences enable the use of CC materials without having to contact the rights holder for permission (providing you follow the conditions of the licence attached to the image).
  + Providing images are taken from print sources covered by an educational establishment’s Copyright Licensing Agency ([CLA](https://www.cla.co.uk/)) licence, staff can then include them in teaching materials, which can be shared via a secure environment like Moodle to enrolled students. **N.B., remember to use the** [**CLA permissions tool**](https://www.cla.co.uk/checkpermissions) **,to make sure the book or journal is covered by the CLA licence.**
  + Search for images effectively online by making use of Google chrome filter and [advanced search](https://www.google.co.uk/advanced_image_search)
* If the above best practices do not provide a solution, then you could make the risk-based decision to use the following UK copyright exceptions:
  + Illustration for Instruction ([section 32](https://www.legislation.gov.uk/ukpga/1988/48/section/32)), allows excerpts of copyright protected work to be used (without having to seek permission from rights holder), providing the usage is for non-commercial teaching purposes.
  + Another UK copyright exception you may consider is Quotation, Criticism, & Review ([section 30](https://www.legislation.gov.uk/ukpga/1988/48/section/30)), which allows excerpts of publicly available work to be used for the purposes specified in this exception (quotation etc..). Remember and only use the amount that is required to fulfil your purpose & provide credit to the creator.

# Best Practice: sourcing and searching for images to be used in teaching and learning materials.

**The text below is best practice that should be employed before using one of the UK copyright exceptions to defend the use 3rd party copyright protected images in teaching and learning materials.**

## Make use of copyright free online resources.

There are a number of online websites/collections that have copyright free images, audio and videos that you are free to use. In some cases, the copyright has expired for the images, and they have entered the public domain (usually historical), or the creator(s) have waived their copyright protection and made the images freely available. Whatever the case may be, always remember and examine the licence or terms and conditions associated with individual images or website, as there could be conditions that are required to reuse them, i.e., provide credit for the creator.

Please make use of [this list](https://edshare.gla.ac.uk/id/document/6902) of copyright free online sources for images, video, and audio

## Creative Commons materials

You should consider using materials that have a Creative Commons (CC) licence associated with them, if its not possible to find copyright free resources online. From a user perspective, materials that have a CC licence associated with them, allow you to reuse without having to seek permission from the creator, providing they are used in accordance with the terms and conditions.

You can find out more about creative Commons by visiting the following webpage and document:

* [Creative Commons Licences](https://creativecommons.org/licenses/)
* [Creative Commons licences and attribution document](https://edshare.gla.ac.uk/id/document/6917)

## Educational establishment’s Copyright Licensing Agency (CLA) Licence

Providing the images are from print sources covered by an educational establishments CLA licence, staff can copy and share images from a published book or journal within teaching materials, course packs. Images taken from these sources can made available to enrolled students in a face-to-face lecture environment or through a secure online platform like Moodle. These types of images are on occasion referred to as ‘[disembedded images](https://cla.co.uk/sites/default/files/CLA-HE-User-Guidelines.pdf)’ **(page 15)**.

On the condition that the use is under the CLA Licence terms, then there is no requirement for educational establishments to report the copying of disembedded images.

You can determine if a book or journal is covered under the CLA licence by making use of the [CLA’s permissions tool](https://www.cla.co.uk/checkpermissions).

## Searching for images online

When searching for images online using an internet browser like Google Chrome, it is important to understand the returned results may have copyright protection associated with them. If images found online are copyright protected, then written permission must be obtained from the rights holder (creator) and payment to use them may be required as well. At this juncture you have two choices to choose from (as shown below):

* Filter your search to include only images with a Creative Commons licence associated with them (please refer to this [video tutorial](https://www.youtube.com/watch?v=Or067XuCHMw) on how to find Copyright free images online)
* Use a UK copyright exception to defend the use of the image(s) - please view following section on what is involved when you’re considering doing this.

# Using UK copyright exceptions to defend use of image(s) in teaching and learning materials.

If you have exhausted the other best practice options, i.e., create your own images, make use of a suitable licence, then you can begin to examine the possibility of using a UK copyright exception to defend the use of image(s).

**Below are UK copyright exceptions that could be used:**

## Section 30, Quotation, Criticism, Review

This exception covers a broad range of work, which includes the use of images under this exception. However, if you intend to make use of this exception, then you must adhere to the following:

* The use must fall under either, quotation, criticism, or review.
* The material is available to the public.
* The use of the material is considered “fair” (see following section for information)
* You only use the amount required to fulfil your intended purpose.
* You must provide sufficient acknowledgment (credit), to the creator of the image(s) when using their work (unless it is impossible for reasons of practicality)

## Section 32, Illustration for Instruction

This exception is relevant for the educational community, as it allows the use of all types of works (including images) providing the usage is for non-commercial teaching purposes.

* Attribution to the rights holder (creator) is provided (unless it is impossible for reasons of practicality)
* The use of the material is considered “fair” (see following section for information)
* The copied materials must be used to illustrate a teaching point about the subject being taught.

## Fair Dealing

Fair Dealing is a legal framework designed to allow the lawful use of copyright protected work without having to seek permission from the author under certain circumstances. Sufficient acknowledgement must be provided to the author when their work is used unless it is impossible to do so.

There is no legal definition of what Fair Dealing is, however the [CDPA](https://www.gov.uk/guidance/exceptions-to-copyright#fair-dealing) does refer to some case law (a legal test) which does provide some factors that should be considered when trying to decide if a use is considered fair or not. A direct quote of these factors can be viewed below:

* *“does using the work affect the market for the original work? If a use of a work acts as a substitute for it, causing the owner to lose revenue, then it is not likely to be fair*
* *is the amount of the work taken reasonable and appropriate? Was it necessary to use the amount that was taken? Usually, only part of a work may be used”*

*N.B., unless it is impossible to do so, you must provide attribution (credit)*

Aside from the above ‘Fair Dealing factors’, you could also consider implementing the following technical measures to help increase the usage being considered “fair”.

* Wherever possible try to make use of [low-resolution](https://www.computerhope.com/jargon/l/low-resolution.htm#:~:text=%22Low%20resolution%22%20is%20a%20relative,may%20appear%20blurry%20or%20indistinct.) copies of images.
* Only enrolled students can access the image(s) through a pass protected, secure environment like Moodle.
* The image(s) are only made available when required, e.g., students can only access the image for a specific week and no longer, they can always be made available again. Resources can be hidden and shown again in platforms like Moodle, so this is another method of controlling the availability of resources within this platform.
* Content should have measures in place to make sure it cannot be downloaded.

# Frequently asked Questions

Below are some questions relating to the use of images in teaching and learning materials.

## Question: I am an educator, can I use 3rd party, copyright protected images in my PowerPoint presentation and then upload it to a Virtual Learning Environment (VLE), like Moodle, so my students can learn from it?

In short, there is a “strong” legal argument that it is appropriate for an educator to include copyright protected work in teaching materials (i.e., PowerPoint slides, PDFs etc..) they intend to upload to a secure VLE for students to learn from.

The UK copyright exception that could be used to defend this usage is [section 32](https://www.legislation.gov.uk/ukpga/1988/48/section/32) (Illustration for Instruction), which allows excerpts of copyright protected work to be used. Providing the usage is both non-commercial and to illustrate a teaching point.

Another alternative to Illustration for Instruction is using [section 30](https://www.legislation.gov.uk/ukpga/1988/48/section/30) (Quotation, Criticism, Review). This exception differs from Illustration for Instruction, as there is no requirement for the usage to be non-commercial, however the work that is used must be available to the public.

In the case of both exceptions, attribution (credit) to the creator should be provided, unless it is impossible to do so for reasons of practicality.

**Before considering using one of the UK copyright exceptions to defend the inclusion of 3rd party content in your teaching and learning materials, you must consider the best practice explored earlier in this document, i.e., “are there suitable licences already in place such as the CLA?”.**

## Can I use images found in teaching materials, that were produced a colleague who left the educational establishment I work in?

It would be advisable to examine your establishments Intellectual Property Policy (or similar), to find clarity around this area. Please remember and check the copyright of any images that are within the teaching materials you have “inherited”. Reverse search engines like [Tineye](https://tineye.com/) are useful if you do not know what the source of an image is and would like to find out. To find out how to use Tineye, please view this [video tutorial](https://www.youtube.com/watch?v=dKQZEXdyVjk), which goes over the process of using it.

## What if an image has “all rights reserved” attached to it, can I use this?

“All rights reserved”, indicates the copyright owner does not want you to do anything with their image, unless you have obtained express (written) permission from them. However, owners cannot restrict activities that are underpinned by some of the UK copyright exceptions, i.e., Illustration for Instruction which has ‘no contractual override’ associated with it. They may, however, choose to pursue legal challenge any given use.

## If required, how do I go about obtaining permission from a rights holder to use their image?

When obtaining permission from a rights holder to use their materials (images etc..), it should always be written. A verbal contract/agreement is not sufficient and would not stand up to scrutiny in a court of law. Obtaining permission from a rights holder can be a lengthy process, it can potentially range from days – months, so be sure to set aside adequate time.

**More information about how to obtain permission, can be viewed in** [**this document**](https://edshare.gla.ac.uk/id/document/6905) **(Word document, downloaded automatically when link is clicked).**

## I contacted a photographer to ask permission if its ok to use an image from their website. I have not heard back from them; in which case is it ok to assume I can just use it anyway?

You should never assume that a lack of response means it give you the right to use an item. It’s at this juncture, you should try a follow up email or other method of communication, i.e., a telephone call. If you still receive no response, you could consider finding an alternative image (ideally one that is copyright free or has a Creative Commons licence associated with it); or consider using one of the UK copyright exceptions to defend the use of the creator’s image.

## Can I make copies of Maps?

You could try contacting your educational establishments library to determine if they have Maps in their collection (or relevant department who can assist you). They may also subscribe to a service like [Digimap](https://digimap.edina.ac.uk/), which provide access to both historic and Ordnance Survey Collections.

Another possible online source for maps you may encounter is Google Earth or Maps. You are allowed to share maps found on Google Earth and Maps either on an open website or the secure Virtual Learning Environment like Moodle, provided attribution is provided. If you embed a map in an electronic resource, i.e., webpage or PowerPoint presentation, then there is no requirement to provide an attribution as its already embedded (“baked”) into the map.

## When a photograph includes copyright protected painting; who is the owner of the copyright?

When a photographer demonstrates sufficient creative control and skill, they will always own the copyright of a photograph they have taken. However, if a photograph includes copyright protected works (painting), that is not permanently situated in public display, you will require permission from the copyright owner of the items. In this scenario you need permission from the copyright owner to photograph the painting for use in your derived photograph, otherwise your activity would result in infringing the copyright of the painting.   
  
**N.B, the only circumstance where an artistic work may captured is “**[**accidentally**](https://www.copyrightuser.org/educate/the-game-is-on/episode-3-case-file-25/)**”.**

## I cannot identify the creator of an image I would like to use in teaching materials, is it still ok to use the image anyway?

Under the premise, you’re using one of the UK copyright exceptions (most likely section 32) to defend the use, then you could make the risk-based decision to use the image without providing credit to the creator or search for an alternative. If you choose to go down the more “risk based” avenue of not providing credit, then you should consider factors like how will your teaching materials be made available to students? If they will be available in a closed Moodle course, then the risk would be relatively low, however, if your intention to distribute them online via a public webpage, then the associated risk is increased. Its important to weigh up various factors when making “risk based” decisions.

Below are some risk-based management (originally identified by [Professor Charles Oppenheim](https://twitter.com/CharlesOppenh)), questions you could ask yourself:

* What is the likelihood that what you are doing infringes copyright?
* How likely is it that the copyright holder will discover your activity?
* How likely is it that the copyright holder will object to your activity?
* What is the impact (both financial and reputational) if the copyright holder was to act against you or the University?