

Dear Greg Walters

Thank you for your enquiry to **Jisc Legal** regarding embedding YouTube clips in a VLE.

I would refer you in the first instance to **Jisc Legal's FAQ What is the legal position concerning the embedding of YouTube videos in a password protected VLE?** which is available at <http://jiscleg.ac.uk/FAQembedYoutube>.

Under the YouTube terms and conditions a user of the YouTube service is not permitted to distribute content in any medium without YouTube's permission and agrees to access the content only via their systems. This makes it permissible to embed the videos into learning materials as the YouTube player is the means by which this happens, in contrast to downloading and converting them to another format which is not automatically permitted.

Furthermore when material is uploaded to YouTube, the uploader grants YouTube and other users such as a university the right to use, reproduce and perform the content (through YouTube media) as per clauses 8.1A and B of the YouTube terms. This is, however, on the basis that the video has been uploaded with the permission of the rightsholder and thus not infringing copyright in the first place. If the video is an infringing copy, s 20 of the Copyright, Designs and Patents Act 1988 (CDPA) would come into play, details of which are outlined below.

Provided content has been uploaded with permission of the rightsholder(s) and the content is embedded using YouTube approved functionality then it will be possible to embed a YouTube video in a password protected VLE without requiring separate permission. Otherwise, permission should be sought from YouTube or, as the YouTube licence is non-exclusive, another possibility is to contact the uploaders/rightsholders and request permission and a copy of the videos directly.

The law of copyright applies to YouTube content that a university may want to embed in the VLE. If the video is an infringing copy, i.e a video which has been uploaded to YouTube without the consent of rightsholder(s), then s.20 of the CDPA will apply - infringement by communication to the public without consent of the copyright holder. What this means is that inclusion in the VLE of material which is already copyright infringing can constitute further infringement by a university. Although embedding may or may not be copying, it is nevertheless likely to be considered communication to the public for the purposes of the legislation.

The onus remains on the college or university to clear the rights of any content that they make available to learners via the VLE therefore some consideration should be given to the provenance of material it finds on YouTube. Where a lecturer wants to use a video clip which it is clear has been recorded from the television without permission from the rightsholder(s) then this should set alarm bells ringing and would merit further investigation regarding permissions. Getting permission from the uploader in this instance will not assist the institution to avoid liability since the uploader does not have the authority to make and distribute a recording of the content.

Where the institution has doubts about whether the uploaders of the videos have the requisite authority to post the content and enable others to reuse it then to reduce the risk of infringement and demonstrate to learners the value and fairness of acknowledging the source of content accurately then a lower risk approach would be to provide a link to the YouTube videos concerned or it may be possible to get permission from the rightsholder(s) to use a legitimate copy of the material concerned within the VLE.

It would appear from recent case law that if a university links to copyright infringing material, it would need to go further than merely providing passive links within its VLE in order to be liable for copyright infringement. Liability is more likely to arise, for example, where the university embeds a link to infringing content in such a way that it bypasses the front page of the website on which the content is hosted such that a student is given the impression they are downloading the material from the university's website and the university is authorising such behaviour.

Irrespective of whether providing links is legal there are risks involved in linking to sites hosting copyright infringing materials. Where a link is provided to content which infringes copyright then there is always the risk that the material will be taken down at the request of the rightsholder. In this case then the link provided on a university's VLE will be useless as a resource. If it is clear to a user trying to access the content that it has been taken down because it infringed copyright then this could damage confidence generally in the content of the VLE. Providing links to material which it later emerges infringes copyright could cause reputational damage to the university if it is perceived to be encouraging its students to access copyright infringing material.

Students may have a reasonable expectation that material they are referred to by university staff will not infringe copyright. In the event that a student downloads a copyright infringing clip from a website it has been referred to by university staff (through inclusion on the VLE) then the student will be infringing copyright, it could be argued on reliance on the judgement of the staff creating the VLE materials. Some companies are very rigorous in pursuing their rights therefore where a link is provided to a website hosting infringing content there is the risk that the university will be pursued by the rightsholders for infringement. Even though ultimately a court may decide linking is not a copyright infringement this could still generate adverse publicity for the university.

For the reasons stated it would be a risk for a university to provide links on its VLE where it knows or has reasonable grounds to believe that the content on the site linked to may infringe copyright. It is obviously a risk decision for the institution whether to opt for linking to the content as opposed to seeking permission or using alternative material. Factors which might be considered are the length of clips concerned and the rightsholder(s) concerned. Some rightsholders are more litigious than others.

I trust that the information provided is useful to you. If you require any further information please do not hesitate to get in touch.

Yours sincerely





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-----Original Message-----

From: greg.walters@uws.ac.uk [<mailto:greg.walters@uws.ac.uk>]

Sent: 27 February 2014 11:41

To: jisclegal-info

Subject: **JISC** Legal Enquiry Form

Results From: **JISC** Legal Enquiry FormSubmitted By: Unauthenticated User IP: 146.191.228.21

Name: Greg Walters

Email: greg.walters@uws.ac.uk

Role: Other

Organisation: University of the West of Scotland

QueryType: Legal

Subject: Copyright/IPR

Query: Hi There,

I'm hoping you can help with the following Copyright related query.

I have a module within our VLE where the lecturer has directly embedded a series of YouTube clips. As far as I'm aware permission has not been asked and the clips seem to come from a variety of sources; BBC, TV commercials and what appears to be a recording from a television.

Here are links to the Youtube clips in question:

<http://www.youtube.com/watch?v=MoE9XxXUatA>

http://www.youtube.com/watch?v=JK_NinOmFWw

<http://www.youtube.com/watch?v=2a0xdbAZLZ4>

<http://www.youtube.com/watch?v=2h0V1YkccEE>

<http://www.youtube.com/watch?v=2WS-Ke0hOX8>

<http://www.youtube.com/watch?v=Ws74HTywcwG>

My question is, would getting permission from the people who posted the videos be OK, or (and I suspect this is the answer), instead of directly embedding the YouTube clips, we instead link to them?

Any help with the above would be greatly appreciated.

Kind Regards,

Greg

DataProtect: I consent to **Jisc Legal** processing my personal information in connection with this enquiry, and, unless you state otherwise, recording the enquiry on the **Jisc** CRM system (summarised to omit any sensitive information). Further information in the 'Data Protection' pane on this page.