



COMMONWEALTH *of* LEARNING

Copyright Guideline

COL's work in Copyright

COL has worked with copyright specialists in the Commonwealth to gain an understanding of copyright and possible flexibilities within the Agreement on Trade Related Aspects of Intellectual Property Rightsⁱ (TRIPS). The results of this work are available on COL's websiteⁱⁱ. Two documents have been produced and sent to Ministers of Education in 2005 and 2006. These documents highlight the flexibilities that are available to countries in terms of international copyright agreements. Both documents and other research materials are available on COL's website at the above link. The objective of this work is to make learning content available at costs that can be afforded by institutions, educators and learners in developing countries.

COL's position on the sharing of learning content

COL sees access to learning materials as being important to the development and improvement of living standards. In the interest of a better educated and informed society, COL encourages educational and knowledge-based organisations to make available as much content as possible with as few restrictions in the copyright licences as possible.

This recommendation is made especially in the interest of making publicly-funded materials available free-of-charge. Public sector and non-profit institutions are funded from public and tax funds, which in turn, should allow free access to such materials.

The "freedom of materials"ⁱⁱⁱ suggested, includes the openness of formats of files, which should be made available in editable formats, and if possible, in formats that may be edited by free software. Where a compiled product is provided (for example, a PDF file), all the components should also be made available as separate items (such as separate, editable graphics) so that others may customise the content for use in a different context.

Content that is free-of-charge may carry a range of licenses. COL uses the "Creative Commons BY-SA-3.0" license on its WikiEducator website and for much of the materials produced by COL. This license allows the materials to be copied, adapted and used for any purposes, provided the finished product is shared in a similar way with others^v. As far as possible, the "NC" or "for non-commercial purposes" restriction is not used and other organisations are encouraged to emulate this example.

The NC Clause

Some organisations prefer to use the NC clause to express their preference that others do not profit from their work. Creative Commons maintain a discussion page on this topic^v. "Profit" in this case should not be confused with "recovering costs, including overhead costs". The NC clause frequently raises a number of issues and needs clarification. When an institution uses materials that carry the NC clause the user organisation may still:

- charge registration fees to learners
- recover the costs of the duplication of the materials from learners or other sources
- recover overhead costs incurred in the customisation, duplication and distribution of materials.

If an institution declares and/or pays a net profit to shareholders, and a part of that net profit emanates from the sale of learning materials marked with the NC clause, a calculation should be done to determine the amount of net profit that has been earned by that section of the materials that has been marked with the NC clause. This is the critical point where the NC and non-NC materials differ. Organisations that provide materials without the NC clause have accepted that the materials they offer to others may be used to profit any other organisations' shareholders (in addition to covering all reproduction costs).

The Mixing of Copyright Licenses

While the mixing of licenses with different restrictions is not ideal and may lead to cumbersome complications, COL acknowledges that materials carrying the NC restriction can be mixed with materials that do not carry the NC restriction. This restriction indicates that a NET profit may not be paid from earnings earned from the sale of materials marked with the NC restriction. Institutions may charge for registrations, costs of duplication and overhead expenses.

Where the same piece of content (for example, a chapter or study pack) contains a mixture of NC and non-NC materials the following document strategy may be used: The overall document may carry one of the licenses, and notes or tags are included on specific paragraphs or sections to show that they conform to a different license.

Should the sections not be tagged, or marked as indicated above, the new material will automatically carry the license of the most restrictive materials included in the new compilation. This may introduce a new infringement of the license in the less restrictive material included in the pack, by contravening the "share alike" restriction.

The ability of institutions to use materials that are free-of-charge may help them to contain the costs of education. The mixing of materials with multiple licenses may initially sound complex, but with a proliferation of new kinds of copyright agreements being prepared by organisations, it appears that having methods to work with this, is becoming more necessary.

ⁱ [Definition: http://en.wikipedia.org/wiki/TRIPS](http://en.wikipedia.org/wiki/TRIPS)

ⁱⁱ [WIPO resource site on TRIPS: http://www.wto.org/english/tratop_e/trips_e/trips_e.htm](http://www.col.org/copyright)

ⁱⁱⁱ <http://www.col.org/copyright>

ⁱⁱⁱ <http://freedomdefined.org/Definition>

^{iv} <http://creativecommons.org/licenses/by-sa/3.0/>

^v http://wiki.creativecommons.org/DiscussionDraftNonCommercial_Guidelines