

Drawing the Blueprint as We Build: Setting up a Library-based Copyright & Permissions service for MOOCs

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Much of the public discussion of Massive Open Online Courses (MOOCs) has centered on new instructional and assessment methods, potential business models, the feasibility of offering course credit, and the future of higher learning.² However, with a few exceptions,³ issues related to copyright have generated considerably less public discussion, while still causing great consternation on many campuses. Specific provisions in the U.S. Copyright Act that allow classroom use of third-party material without permission, such as section 110(1) and (2), seem not to apply in the MOOC environment. Fair use is certainly still available, but its application may be much more limited than in traditional classrooms. As a result, instructors often find themselves unable to use the same resources they have long relied on in their on-campus courses. To avoid too much frustration and facilitate the best possible instruction for these course, the Office for Copyright and Scholarly Communication at Duke University Libraries, began working with faculty early on in Duke's foray into MOOCs to address copyright-related challenges in course development

Planning the MOOC copyright service

When Duke University began planning its Coursera offerings in the spring of 2012, it quickly became clear that our faculty wanted to as creative in these courses as they are in their

regular classrooms. The university decided to provide a copyright and permissions service to enable Coursera instructors to use materials that support their pedagogical creativity. Since Duke University Libraries already offers copyright guidance to faculty through its Office of Copyright and Scholarly Communication (OCSC), the library seemed an ideal venue for this service. However, as the expected volume of consultations would have resulted in an unmanageable increase in the workload for existing staff, the Office of the Provost generously provided funding for a Copyright and Permissions Intern. In July of 2012, the OCSC was able to hire a student who was completing her M.L.S at nearby North Carolina Central University, and who had had a course in intellectual property during her studies, as a 15-hour per week intern to work on this project. This allows the Libraries to help faculty indulge their pedagogical creativity in course development while respecting the rights of other creators.

With a potentially huge number of individual items of teaching content included in the Coursera lecture videos, it is not feasible for our office to review the potential copyright issues related to every text excerpt, image, or video clip the faculty would like to use. However, each instructor receives a list of general fair use guidelines to assist with decision making, and they are also encouraged to contact us with any concerns about a particular use. A copy of those Guidelines is provided as an appendix to this article.⁴ When permission is need for specific material, the Permissions Intern will contact and negotiate with rights holders on the instructors' behalf. We⁵ also provide assistance in finding alternate material that is in the public domain or made available through a Creative Commons or similar open license, when such substitutions are workable.

Copyright guidelines

Coursera's copyright guidelines for instructors strongly discourage the use of third party copyrighted materials, and include as "prohibited" material political cartoons, Getty Images, popular movies, television shows, popular songs, and trademarks.⁶ However, in many cases, content from popular culture is integral to the instruction for specific courses, from a line-by-line rhetorical analysis of a newspaper editorial to highlighting video processing mistakes in a high-grossing Hollywood film. Therefore, Duke's guidelines do not prohibit instructors from using designated types of content. We do ask them, however, to consider carefully if the specific material is essential to the pedagogy of the course, or if a public domain or Creative Commons-licensed alternative might serve their purposes equally well. If the instructor considers the material essential, our guidelines provide them with assistance in making "a judgment about when fair use in a Coursera course is most defensible" and when permission should be sought for different types of content.⁷ Because there are no bright-line rules for fair use, our guidelines are flexible and we often provide consultations on specific uses.

Because the use of copyrighted works as outside readings for MOOCs may well lack the same strong transformative argument that underlies our fair use rationale for materials incorporated into lectures, we have chosen not to rely on fair use for any book excerpts or journal articles that will be provided directly to MOOC participants. Instead, our approach has been to either seek permission from the rights holders or to find open access alternatives. The ongoing negotiations between Coursera and several large publishers have facilitated permissions for this purpose in several instances.⁸

Talking with instructors

Early in the course development process, OCSC staff meet with instructors and support staff from the Center for Instructional Technology (CIT) to discuss the types of content the instructors hoped to use and to uncover whatever possible copyright issues we might encounter. If the instructor wishes to use any substantial portions of third-party content, we offer to seek permission on his or her behalf. In order to submit the requests to rights holders, we asked faculty to answer the following questions:

- How do you intend to use the material? (e.g., what lesson you'll be using it to teach, and also if you'll be modifying it, critiquing it, etc.)
- Are you the author/creator of the content?
- Are you willing to provide a link through which students have the option to purchase the material? (Although we avoid requiring any purchases by all students, providing an option to buy an entire book, for example, often increases the rights holders willingness to allow the use, often without a fee.)
- Will the material be embedded in a video?
- Will the material be included in slides that students can download?
- Would you be willing to link out to the content and then have students restart the lecture from that point after viewing it?

In order to facilitate the permissions process, we also asked instructors to provide any identifying information for the content, such as the title, creator, date, URL, and page numbers or time codes, which would help us describe it to the rights holder.

The OCSC and CIT staff also assisted faculty in locating open resources. Instructors' permissions needs are drastically reduced when we can find open access alternatives, such as

articles in open access journals or institutional repositories, and Creative Commons-licensed media on websites like Flickr, Wikimedia Commons, and Vimeo.

Seeking permission

Requests to reuse material for educational purposes, but within courses that have relatively few limitations to access and massive enrollments scale are relatively new territory for both educators and rights holders. In many cases the rights holders have not responded to our requests at all, although this is a problem for all sorts of permission requests, whether for MOOCs or other purposes. When we do receive a response, the terms of any grant of permission can be very unpredictable, ranging from gratis permission for a 40-page excerpt from a book to a \$50,000 licensing fee for a two-page article. It is also worth noting that the Copyright Clearance Center, which is often a source for permission when we want to make an on-campus use beyond the scope of fair use, is ill-equipped for permission requests for use with MOOCs; its “mathematical” approach of simply multiplying a per-page fee times the number of pages and the number of students results in impossibly high price quotations. This method also ignores the significant marketing advantage that rights holders receive (and which many have acknowledged) when short excerpts are used in MOOCs and the entire work is recommended to the participants.

One pattern we have observed is that when permission has been granted, it seems important to most rights holders that the content be embedded in a lecture video, and not available on slides that would allow students to easily reproduce the copyrighted content. On the other hand, when materials, especially short readings, are to be provided directly to participants,

we have had to explain and document the boost in sales that usually occurs, both to the rights and the marketing departments of publishers.

Using Images

Our guidelines suggest that faculty can generally rely on fair use when the instructor only wants to use a few images from a single source, particularly if the images are not used as “window dressing” but are specifically discussed or critiqued. However, we did request permission to use two movie posters, since the posters were commercial in nature and the use was not strongly tied to the specific pedagogical point. One film studio offered gratis permission, while the other asked for a \$250 licensing fee.

We also sought permission to reproduce several images from textbooks – in one case, over 100 images from a single textbook, which the instructor intended to recommend on the course landing page. The publisher initially denied this request, as they felt that the reproduction of 100 images with no guaranteed revenue stream for the authors would not be acceptable. However, while we were still negotiating on our own behalf, Coursera was able to arrive at a broader arrangement with the publisher in question, as well as several others, which made the use possible.

Using Music

In most cases, instructors for our courses wanted to use music essentially as a soundtrack playing in the background of a lecture, not subjected to specific discussion or analysis. Based on experience and our guidelines, faculty are advised in these situations that the best option is

simply to remove the music, or to replace it with Creative Commons licensed alternatives. We submitted a number of permission requests for song clips, but received a response to only one request. The response we did receive – which was a request for more information about the project – arrived too late for the material to be included in the course.

Using Video

Success when seeking permission to reuse segments from popular television shows and movies has varied dramatically. One division of a media and entertainment conglomerate allowed gratis permission for a two-minute clip, while another unit of the same company denied a similar request. And we discovered that one of the major television networks has a 30-second, \$1,000 minimum licensing structure. Overall, however, we have had sufficient success with video requests that we do not find it necessary to tell our faculty to stay avoid popular media entirely. Still, given the uncertainty, we do advise that they have a backup plan to either use different content, alter the lesson, or link to an available source for the video and have students simply follow the link and then return to the lesson.

Some rights holders are willing to grant permission if the content is embedded in a streamed lecture video, but not if it can be downloaded. However, restricting the video to Web streaming is incompatible with the Coursera platform, and to do so would be a disadvantage to the many students who have limited Internet connectivity or devices that cannot play some streamed content.

Using Copyrighted Works as Outside Reading

A few smaller publishers (each publishing less than 15 journals) have granted us gratis permission to reuse entire journal articles. A number of university presses and society publishers have offered relatively inexpensive licensing fees of \$50-\$100. However, one larger publisher asked for a licensing fee of \$0.26 per page per student – which is not feasible for courses enrolling tens of thousands of students.⁹ Another scholarly society publisher responded with a categorical no.

Occasionally, the instructor for the MOOC is also an author for the article(s) he or she wanted to assign as outside reading. In those cases, it is helpful to examine carefully the rights transferred to the publishers and those retained by the authors. In some cases, these retained rights may be broad enough to allow some version of the article – often the final, post-peer review manuscript – to be used without permission for the authors’ own instructional purposes. And even where the publishers’ copyright policy does not allow the final PDF version of an article to be posted on an open website, they still often permit voluntary deposit of that final accepted manuscript, or post-print, in the author’s institutional repository. In one instance, therefore, our office advised an instructor about his rights as an author and facilitated the posting of five final manuscripts to DukeSpace, Duke University’s open access repository, so that his articles could be accessed by the students in his MOOC.

Lessons learned

Over the past several months, it has become clear that the success of permission requests for MOOCs is hard to predict. Instructors who would like to use copyrighted materials should always have a back-up plan in mind, not just a vague idea of substituting open access content but a specific list of alternate materials. Unexpected delays in the process – like Hurricane Sandy

closing a publisher's office for a week – may mean that a professor only has a few days to find replacement materials and record the planned lecture.

At the outset of the copyright and permissions service, we did not have a clear timeline for requests – a problem we have since remedied. We now ask instructors to submit all permission requests by ten weeks before the live date, to allow adequate time for response and follow-up. When the material comes from popular media or if it is the foundation of an entire lecture, they are strongly advised to submit those materials well in advance of the ten-week deadline, so that they have time to redesign the lecture if necessary. If copyright clearance is not in place by six weeks before the live date, the instructors are advised to substitute alternate material. This six-week deadline allows time for video production and processing by both Duke and the Coursera staff.

Linking and Accessibility

In some cases where we have been unable to get permission, or the licensing fees are prohibitively expensive, faculty have chosen to link to the content on the web. Because some television and movie production companies make video clips of their content available for free online, our professors were able to have students view the clips and then return to the lecture. However, while linking out to content avoids the issue of copyright infringement, it is not a perfect solution. Geo-blocking of web content is a major issue; for example, YouTube videos may not be available to students in certain countries. One course offered by a Canadian university linked to a video from the Canadian Broadcasting Corporation, and the university staff did not realize it was blocked to users outside Canada until hundreds of Coursera students reported problems accessing the video.¹⁰ Another potential issue when linking to external

websites, particularly personal websites, is the ability of the website to handle the increased traffic; a Google server crashed when students from one Coursera course were asked to visit a Google Docs spreadsheet.¹¹ To address the potential for both of these problems, Duke instructors are now asked to speak with their assigned CIT consultant before linking to an external website, so that potential problems might be anticipated.

Accessibility for learners with disabilities is also a concern. Educational institutions are legally obligated to provide equal learning opportunities to disabled students, a requirement Brandon Butler of the Association of Research Libraries says is likely to extend to content provided through MOOC platforms.¹² Before linking to an external video or document, the instructor should ensure that the material will be accessible to students with disabilities. Alternative text content should be made available for all images, video, and audio.

Impact and Assessment of Service

Time Commitment

From August 2012 to May 2013, a total of 294 hours were spent on 15 courses, four of which are still in development. The amount of time devoted to each course varied greatly depending on the instructors' needs for copyrighted material and the degree to which they relied on our services. One instructor personally sent 35 of the 54 permission requests for his course, but asked for assistance locating over 100 Creative Commons-licensed images. Another instructor asked for advice on fair use a few times, but did not need any help requesting permission or finding open resources. For the eleven courses for which the development is complete, the time commitment ranged from over 70 hours for one course to less than two, with a median of 13.7 hours and a mean of 23.7 hours per course.

Success rate

A total of 172 permission requests have been submitted for materials used in MOOCs, 52 of which were sent by the instructors themselves, and 120 by the OCSC Permissions Intern. In response to these requests, gratis permission was obtained in 86 instances, and permission contingent upon payment of a licensing fee in 34 cases. Second requests and more detailed information about the use were often required in the process of obtaining these permissions. In addition to these responses, we also count as successes the many times when we were able to locate an open access or Creative Commons licensed alternative that worked for the Instructor.

Permission has been flatly denied, with no room for negotiation, seven times, and there has been no response to the remaining 42 requests; some of these request are still pending, while for others we no longer expect any reply. Although the process can be frustrating at times, especially when there is no reply or an unequivocal no, we feel that this success rate, and the improved pedagogy it facilitates, has been worth the investment the Libraries have made in this service.

Feedback from faculty

In order to gauge the success of the copyright and permissions service and identify areas for improvement, we sent a survey in early May 2013 to faculty whose courses were underway or complete. We received responses from 10 of the 15 instructors who received the survey.

According to the faculty, a number of copyright-related issues affected their courses. The process of obtaining a license was identified by 4 instructors as an extremely important barrier and by 5 as very important. Delays in the permission process were extremely important or very important to 8 faculty members; one instructor reported, “The biggest problem was timing. We did not know about permissions until the last minute and almost had to [redo] some lectures in

one case.” Now that we have a better idea of how long it typically takes rights holders to respond to our MOOC requests and have created a clear timeline, we hope the process will be less frustrating. Unfortunately, some frustration may be unavoidable, as extremely high licensing fees or a lack of response from rights holders may force faculty to redesign their lectures. Four instructors indicated that they had to make substantial modifications to their original course plan due to copyright or licensing issues, and another four reported minor modifications.

Overall, the majority of MOOC instructors who responded to this survey found all three services that we provided – permissions requests, consultations on fair use and assistance locating open access alternatives – useful and valuable. In a very few instances, instructors felt that the Libraries’ permission service was not working hard enough on their behalf, and it was necessary to explain more clearly the steps that had been taken to obtain permission and the fact that rights holders often simply do not reply in a timely way. We have determined that it is more important than we initially believe to communicate the process, and not just the results, to our MOOC instructors.

One question that produced an interesting dichotomy was about the amount of copyrighted material used in a MOOC as compared to the faculty members’ on-campus course. About two thirds of the respondents said that they used less copyrighted material in their MOOCs, which was the answer we expected. The absence of the normal exceptions for face-to-face teaching and the difficulties of clearing permissions led us to assume that instructors would eliminate some copyrighted content as the course went online. But a third of the instructors told us that they used “much more” copyrighted content in their MOOCs. We speculate that both the

limitations and the possibilities of the recorded lecture format inspired this increase for some instructors.

We were also interested in finding out if developing a MOOC had any impact on instructors' awareness of and attitudes toward open access, particularly given the obstacles they encountered when using copyrighted material. The experience of creating a MOOC influenced five instructors' opinions on publishing in open access, including one faculty member who indicated that they were affected "an extreme amount." Four instructors also reported that they are now more aware of the publishers' agreements for articles they authors.

Conclusion: Growing awareness of copyright issues and open access

As Brandon Butler says in his "Issue Brief" on MOOCs:

Copyright issues are already leading to frustration among MOOC teaching faculty, and this provides a teachable moment for open access advocates. As faculty and staff work to navigate the difficult or impossible task of clearing necessary rights for copyright-encumbered materials, they may be more receptive to open access alternatives. In the process, they may be receptive to a broader discussion about the importance of making their own work (especially new work created for MOOC teaching) available on an open access basis so that they and their peers can use it in a variety of contexts without worrying about copyright.¹³

The primary purpose of the service regarding copyright and permissions that the Duke University Libraries' has provided for MOOC instructors has been to lessen the frustration that Butler describes and to facilitate the best possible experience for both participants and instructors. At the same time, the opportunity to illustrate in a concrete and practical fashion that open access to scholarship can offer has been very valuable. It is our hope and belief that the current interest in MOOCs will be yet another factor in the continuing process of creating a more open environment for scholarship and teaching.

Appendix -- Guidelines for using copyrighted material in Coursera MOOCs

Kevin L. Smith, Duke University Libraries
August 2012 [updated October 2012]

The partnership between Duke University and Coursera to create “massively open online courses” offers an exciting opportunity to bring the superb teaching of the Duke faculty to an entirely new audience. These MOOCs provide an opportunity for Duke to enhance its commitment to put knowledge at the service of society and for faculty members to interact with students they have never before been able to reach on a wholly new, worldwide platform. Because this way of teaching is so new, and so potentially transformative, it requires a willingness to be experimental and flexible as we learn both its potential and its pitfalls. These guidelines are intended to help you navigate, especially at the very beginning of this exciting new venture when there are many uncertainties, the use of copyrighted materials in the development of a MOOC.

Prefatory notes

- Coursera advises against the use of third-party materials in courses unless permission has been obtained. The Copyright and Scholarly Communications office will assist with getting permission whenever possible, but it is not always possible to contact rights holders or to pay the fees requested.
- Many of the educational exceptions that allow classroom use of third-party material without permission do not apply in the Coursera environment.
- The most likely consequence of a complaint alleging copyright infringement is that a course will suddenly be taken down from the Coursera site. Coursera has registered an agent to receive so-called “take down” notices and clearly intends to take advantage of the safe harbor provided to online service providers when they act quickly to remove contested content.
- Fair use can apply to MOOC courses, but in a more limited fashion than it does in more closed educational environments.
- These guidelines represent a judgment about when fair use in a Coursera course is most defensible. In many cases, the best decision might be to simply remove third-party copyrighted content that is not essential to the pedagogy of a course. Those who have taken MOOCs tell us that the experience is quite different than in a classroom, and the impact of purely illustrative content is reduced.
- When material is deemed essential, please consider these fair use reflections for different types of content:

Text

- Short quotations from the literature of a discipline that are incorporated into a lecture and/or the accompanying slides are clearly fair use and do not require permission.
- Distribution of more text than a long quotation should probably only be done with the permission of the publisher.

- Where the instructor is also the author of the work being distributed, the publisher is more likely to grant permission.
- Whenever possible, a recommendation to purchase the book from which an excerpt is taken, and a link through which students can make such a purchase, will also encourage the publisher to grant permission.

Images (including graphs and figures)

- When the use of illustrations, graphs and figures is integral to the point of the lesson, and the picture or figure is subjected to commentary and critical assessment, the case for fair use is quite strong. If such selected material comes from diverse sources and is not too numerous, permission need not be sought.
- In many cases, a licensed substitute (such as a picture carrying a Creative Commons license or dedicated to the public domain) can be found for those pictures that depict a specific subject but where a particular picture of that subject is not required. The Permissions Intern can assist with locating such substitutes.
- When the purpose of the picture is merely to break up the text in PowerPoint slides or illustrate them, these images can often be removed in order to reduce the burden of clearing copyright without harming the experience of an online, asynchronous course.

Music/Sound

- Coursera's position is that "popular" music should not be used without permission. Use of other musical or sound recordings should be evaluated carefully and on a case-by-case basis.
- Whenever possible, it is preferable to link out to a sound file if one is available on the web. In those cases, students would be directed to follow the link, and then return to the lecture. This is especially appropriate when the entirety of a musical work must be heard before the lecture will continue. Incorporating significant amounts of a musical or sound recording into a lecture increases the chances that the course will be subject to a "take down" notice.
- The case for fair use is much stronger when the discussion of what students are hearing is to be intermingled with that sound file. In those cases, where the sound file will be interrupted by discussion before it ends, the teaching method itself lends strength to the fair use case. Sound files treated in this way, that are no longer than is needed to make the pedagogical point, can be regarded as fair use for which permission is not needed.
- When a substantial sound file, which will not be intermingled with discussion, is incorporated into the lecture, rather than linked to, permission should be sought.

Video

- Whenever possible, it is preferable to link out to a video. In those cases, students would be directed to follow the link, view the video, and then return to the lecture. This is especially appropriate when the entirety of a video clip must be viewed before the lecture will continue. Incorporating significant chunks of video into a lecture increases the chances that the course will be subject to a "take down" notice.
- The case for fair use is much stronger when the discussion of what students are seeing in the video clip is to be intermingled with that clip. In those cases, where the clip will be

interrupted by discussion before it ends, the teaching method itself lends strength to the fair use case. Clips treated in this way, and still no longer than is needed to make the pedagogical point, can be regarded as fair use for which permission is not needed.

- When a substantial clip of video, which will not be intermingled with discussion, is incorporated into the lecture, rather than linked to, permission should be sought.

Acknowledgement

- Many of the licenses that allow us to use materials without seeking further permission, including Creative Commons licenses, require that attribution be made to the original source. Since such acknowledgement is also good scholarly practice, this requirement is perfectly acceptable. Acknowledgement of such licensors can be made at the end of an individual lecture; it need not be included on the particular slide or at the time when the work is used, if that would harm the flow of the instruction.

¹ Kevin Smith, who is a librarian and a lawyer, is the director of the Office for Copyright and Scholarly Communications in the Duke University Libraries. Lauren Fowler, M.A. and M.L.S., served as the Copyright and Permissions Intern for the 2012 – 2013 academic year and is now the Electronic Resources Librarian at Caldwell College in New Jersey.

² Melissa Korn and Jennifer Levitz, “Online Courses Look for a Business Model,” *Wall Street Journal*, January 2, 2013, accessed February 27, 2013, http://online.wsj.com/article/SB10001424127887324339204578173421673664106.html?mod=googlenews_wsj; “What You Need to Know about MOOCs,” accessed February 27, 2013, <http://chronicle.com/article/What-You-Need-to-Know-About/133475>

³ Kevin L. Smith, “Making MOOCs Easier,” *Library Journal*, January 24, 2013, <http://lj.libraryjournal.com/2013/01/opinion/peer-to-peer-review/making-moocs-easier-peer-to-peer-review/>;

Brandon Butler, “Issue Brief: Massive Open Online Courses: Legal and Policy Issues for Research Libraries,” October 22, 2012, <http://www.arl.org/bm~doc/issuebrief-mooc-22oct12.pdf>

⁴ In addition to the guidelines drafted at Duke, a similar guide about copyright and MOOCs from the University of Pennsylvania can be found at <http://guides.library.upenn.edu/content.php?pid=244413&sid=3375306>.

⁵ Throughout this discussion, “we” refers primarily to the authors, but it is important to note that many of the activities and decisions made in the process of assisting MOOC instructors on copyright matters were also discussed with Lynne O’Brien, Director of Academic Technology and Instructional Services for the Libraries, Amy Campbell, Assistant Director of the Center for Instructional Technology, and the CIT staff, who were assigned as consultants to work with individual instructors.

⁶ Coursera, “General copyright guidelines,” last modified March 23, 2013, <http://support.coursera.org/customer/portal/articles/548531-general-copyright-guidelines>. Registration required for access.

⁷ Kevin Smith, “Guidelines for using copyrighted material in Coursera MOOCs,” updated October 2012. Full text of guidelines is available in appendix.

⁸ In May 2013, Coursera announced a significant agreement with a number of major publishers. See the announcement at <http://www.marketwire.com/press-release/coursera-announces-pilot-program-with-publishers-supplement-online-courses-with-high-1788086.htm>, and a news story about it from *Library Journal* at <http://lj.libraryjournal.com/2013/05/academic-libraries/coursera-publisher-pilot-offers-licensed-content-to-mooc-students/>.

⁹ Some publishers are considering working with SIPX, a copyright clearance service out of Stanford. At present, we are not planning to use their system, which passes the licensing cost along to students, as we believe it is incompatible with our fundamental goal of providing educational materials with no financial barriers to students.

¹⁰ Rita Vine, e-mail message to first author, May 14, 2013.

¹¹ Debbie Morrison, “How NOT to Design a MOOC: The Disaster at Coursera and How to Fix It,” *online learning insights: a Blog about Open and Online Education*, February 1, 2013, <http://onlinelearninginsights.wordpress.com/2013/02/01/how-not-to-design-a-mooc-the-disaster-at-coursera-and-how-to-fix-it/>.

¹² Butler, “Issue Brief,” 12.

¹³ Butler, “Issue Brief,” 14.