1. **Introduction**

This Q and A provides an overview of copyright law and how it applies in a variety of scenarios relevant to work based learning (WBL) providers. Various funding arrangements exist in WBL and how the law applies will depend on the particular circumstances and the nature of the relationship between the provider and the learners. Whether or not an activity is purely commercial will be an important factor to be considered.

2. **What is copyright law?**

Copyright gives rights holders the right to control how their material is used and shared. Music, video, e-books, software and films are all typically protected by copyright, and, in most cases, a licence is required for re-use. The law also provides some exceptions where permission (or a licence) is not needed. These exceptions are usually restricted to non-commercial use. In terms of copyright law, however, most WBL activities are likely to be considered commercial. Further guidance on what is ‘commercial’ is available below.
3. **What does this mean for a WBL provider?**

This means that when you are using works, you need to either have the right to use them, or make a risk decision to use them without permission. Downloading something from the internet that is free of charge doesn’t mean it is free to use. You will also need to check the basis of the contract under which you are carrying out the work. For example:

A. **You are employed by a college to carry out WBL on their behalf and under their direction** - It is likely that on the basis of the contract, you may be able to use the college’s resources licensed for staff, including contracted temporary staff.

B. **You are a small independent business and have obtained work directly from a local authority, or other non-profit organisation** - It is less likely that the local authority will have access to materials you need via a licence and there will be a greater expectation on you to provide the resources. So, to avoid risk of copyright infringement, you will need to either

   - use openly and freely available resources (such as those licensed under a Creative Commons licence e.g. CC-BY), or
   - negotiate your own appropriate licence (such as the [CLA Business Licence](#)), or
   - generate your own materials from scratch without infringing someone else’s copyright

C. **You are a WBL provider working independently and have obtained a contract from a UK-wide commercial plumbing business to train apprentices** - This is almost certainly commercial activity. As above, the plumbing business will probably expect you to provide your own resources. To avoid copyright infringement, you will therefore need to adopt one of the options detailed in B. above.

4. **If I need permission, how do I go about this?**

It may not be straightforward to ascertain who owns copyright, or has the right to grant permission. For example, it may vest in the author or creator of materials, his/her employer, or have been sold or transferred to someone else.

In addition, it is not always clear what permission has been provided. There are a number of possibilities:

   - there is a licence, such as a Creative Commons licence, which clearly describes what you can do with materials
   - there is a copyright notice contained in the terms of use of a website
   - a link to another site is embedded in “all rights reserved” text
   - there is a © symbol with an individual or organisation’s name
   - as a last resort, you search the name of the copyright holder and contact him/her directly
In any case, you should ensure that the permission or licence you get covers what you want to do with the materials. Also, it is important to note that, if you do contact the rights holder and receive no response, this does not allow you to go ahead without permission.

5. Do I always need a licence?

Where you are using works in which the copyright has expired, you do not need a licence but given the duration of copyright (70 years after the death of the author for most works), this is unlikely to apply.

Copyright law provides specific exceptions to infringement where a licence is not required. These are, for the most part, limited to fair dealing and non-commercial use e.g. section 32 of the Copyright, Designs and Patents Act 1988 (CDPA) applies where a copy is used to illustrate or reinforce a teaching point, or to set an exam.

There is, however, an exception which applies equally in a commercial context; fair dealing with a published work for the purposes of criticism or review (section 30 CDPA). Provided the copying is for the specific purpose of criticism and review and it is ‘fair’, the WBL provider can copy a fair amount of the materials lawfully without a licence.

6. What is ‘fair dealing’?

There is no legal definition of ‘fair dealing’. It requires a fair balance to be made in each case between the rights of the copyright owner and those who want to make use of their work. Where the use would not adversely affect sales of the work and where the amount copied is reasonable and appropriate to the context, it is likely to be considered fair dealing.

7. What is ‘commercial’?

The law does not define commercial. An activity is certainly more likely to be considered ‘commercial’ where you make, or intend to make, profit as part of running a business. The key issue is the purpose, or nature of an activity (rather than the type of organisation).

8. If there is no licence, can I go ahead and use the material?

If there is no pre-existing licence attached to a copyright work and no copyright exception applies, you will need permission from the rights holder to use the work lawfully. You may, on balance, decide to take a risk decision. Copying a high resolution image from a commercial image library will be high risk, for example. On the other hand, copying a thumbnail image of a book cover is arguably promotion of the product, and lower risk.
Questions to ask include:

a) Do I really need to use this particular image, or can I use one which is openly licensed?

b) Is the image obviously commercial? e.g. it belongs to a rights holder such as Disney who actively assert their copyright.

c) Is there any indication of who to contact for permission?

d) If I use the image, will it be available to everyone or a select audience, such as behind a password protected VLE?

e) Have I a procedure in place to deal quickly with requests to remove content from copyright owners?

f) Ultimately, what is my risk appetite?

9. Want to know more?

Questions and Answers - Copyright Changes 2014 includes guidance on defining fair dealing:
http://jiscleg.al/CopyrightQandA

Duration of copyright:
http://www.ipo.gov.uk/types/copy/c-duration.htm

In terms of copyright, what is “commercial activity”? (17 September 2012):
http://jiscleg.al/FAQCopyrightCommercial

For further information on copyright law generally:
http://jiscleg.al/Copyright

About Jisc Legal

Jisc Legal, a Jisc service, provides guidance to prevent legal issues being a barrier to the development and adoption of new ICT within the education sector. It supports a wide range of staff within FE and HE, including managers, IT directors, administrators, and academics, with the aim to make best use of technology in developing institutional effectiveness, without legal issues becoming a barrier to appropriate use.