

# EDRENE

## Rights Issues

Thematic synthesis report

**ECP-2006-EDU-420002**

**EdReNe**

<b>Deliverable number/name</b>	<i>D-6.3</i>
<b>Dissemination level</b>	<i>Public</i>
<b>Delivery date</b>	<i>23 December 2009</i>
<b>Status</b>	<i>Final</i>
<b>Author(s)</b>	<i>Tommy Byskov Lund with contributions from network members and UNI•C colleagues</i>



**eContentplus**

This project is funded under the eContentplus programme<sup>1</sup>,  
a multiannual Community programme to make digital content in Europe more accessible, usable and exploitable.

---

<sup>1</sup>

OJ L 79, 24.3.2005, p. 1.

## Contents

Conclusions.....	3
Introduction.....	4
Policy makers - relevant policies and initiatives.....	6
Reform of copyright law .....	6
Which license(s) should be encouraged? .....	7
Increase educational impact of funding .....	8
Teachers and students.....	10
Remixing open educational resources and incompatible content.....	12
Institution management.....	14
Publishers and content providers.....	16
Repository owners.....	18
Risk Management Strategy and policy framework .....	18
Monitoring copyright infringements .....	19
Expression of rights - User Interface issues.....	20
Guidance materials and awareness-raising.....	22
Appendix: Awareness raising initiatives .....	24

## Conclusions

This report gives recommendations concerning rights issues in relation to educational repositories. The scope of rights issues is in this report almost exclusively limited to a discussion of copyright. This is not because this is the only relevant issue but it is the one topic that by far has received the most interest and discussion during EdReNe workshop.

The most general conclusions that can be drawn from the discussions so far are that current copyright legislation is not in tune with what would be expected and considered fair in relation to education, and that currently the strongest and most often heard response from the educational sector is to use open licensing while waiting for a reform of copyright law. And between the various open licensing schemes available Creative Commons is by far the most widespread and developed scheme – also for educational purposes, and even for supporting hybrid business models bridging the “sharing economy” and traditional commercial publishing economies.

The recommendations in this report are grouped according to the different stakeholder groups of repositories – here defined as:

- Policy makers
  - Should help develop copyright laws, and
  - Establish coherent licensing strategies for publicly funded learning resources
- Teachers and students
  - Are encouraged to publish their work under CC-BY licenses, and
  - Given recommendations on how to remix “incompatible” content
- Institution management
  - Are encouraged to set up institutional policies and strategies concerning IPR, and
  - The production of open content from their institution
- Publishers and content providers
  - Should seek to build new business models – for example around added value services instead of content
- Repository owners
  - Are given guidance on setting up a policy framework, choice of licenses, expressing rights as part of the user interface, and how to provide guidance to users when depositing or accessing resources

The report ends with an appendix showcasing some of the approaches taken to educate teachers and students on the current state of copyright legislation, in order to move productively forward and actively nourish their creativity by allowing the adaptation, combination and republication of content originating from different sources.

## Introduction

This report attempts to summarize the main points from discussions and presentations around rights issues during EdReNe workshops. It will focus almost exclusively on copyright issues although there are of course also other related topics such as for example other IPR issues, e-Safety, media literacy etc.

The reason for this is that current copyright legislation seems to be one of the absolutely most important barriers for teachers and students to incorporate the full potential of ICT in learning and a recurring point of discussion in many of the use cases discussed within EdReNe.

This is also reflected in the issues that EdReNe members have chosen to give priority during the two workshops on rights issues:

- Providing guidelines for users/teachers/producers
- Licensing schemes (consequences for remixing; Creative Commons; presenting usage rights; cross border concerns...)
- Relevant policies and initiatives (open educational resources; education of content creators; free access to content produced for public money; incentives for commercial producers...)
- Rights clearance practices (guidance to educators; strategies for providing copyright cleared material for education...)
- Protection of rights: Digital Rights Management

*"If the law is going to regulate your kid, it must do so in a way your kid can understand"*

- Lawrence Lessig

Confusion, lack of coherence, stifling of creativity and "the only law currently criminalizing most of a generation" are some of the words that come to mind when trying to describe how current copyright legislation matches the ambitions and desired creative and constructionist practise of the educational sector. This is in stark contrast to the ideas underlying these very same laws - that is to encourage the production of inventions and creative works that benefit society and to help innovators and creators make a living from their work.

When most laws regulating copyright were issued they only regulated a rather limited number of people – with the primary aim of protecting against unrightfully exploiting other people's ideas and creativity.

This situation has changed dramatically today. Copyright law is for sure still needed to provide the incentives to create new ideas. But the clash of digital technology with "copying" as the basis for regulating behaviour makes the current legislation prone to regulating a huge number of use cases that were not intended.

It's important to recognize that the current control given to rights holders by copyright law is dramatically greater than the control the law gave in the analog world. And this change in the scope of control has not come about from *politicians* deciding that the copyright owner needed more control. The change came

instead because of the technology we use to gain access to our culture. Because the design of copyright law interacted with the use of digital technology a massive expansion in the reach of the law has come about.

Some of the scenarios that are relevant to different stakeholders of educational repositories form the basis of the following paragraphs which will try to give recommendations on how to move forward with the problems the current legislation imposes on education as seen from the perspective of these different stakeholders.

## Policy makers - relevant policies and initiatives

With IPR issues increasingly impacting learning situations it also becomes important to have clear goals and strategies from the political levels on how educators and students should be allowed to interact with the content used and in some cases intended for educational purposes.

Politicians would of course be able to influence a reform of copyright law – but also make sure that awareness of the existing possibilities within current legislation are used to their best. This section attempts to give recommendations on this.

### Reform of copyright law

As new technologies have emerged, new challenges to copyright laws have followed. Copyright laws need to be sufficiently flexible to accommodate technological developments.

Whereas the use cases for education that relate to copyright issues around the world are very similar, the current legislation when viewed on a global scale is however a bewildering patchwork of international treaties and contrasting sets of national legislations. Among legal systems rooted in English law different flavours of educational exceptions fit into categories of “fair use” (U.S.), “fair dealing” (U.K.) or “flexible dealing” (Australia) whereas most other legal systems based on continental European law (*droit d’auteur*) have customised lists of uses that are permitted without license.

If, as one example, a teacher wishes to produce learning materials as a remix of resources originating from different countries (but quite likely included as part of the results from e.g. a single global search engine) she has the choice of either studying to become a copyright expert or, risk breaking the law, or simply refrain from producing this remix.

Such complexity and diversity of course not only could stifle the individual teacher but at the same time hinders the creation of a global commons of resources available under standardized terms of use. Clearly there is a need to harmonize copyright law internationally and not only harmonize it but make it understandable to the people it affect.

Many suggestions on such reform have been put forward<sup>2</sup> differing in their ambition and scope. One thing common to most suggestions is that reform necessarily has to be global – harmonization across borders is much needed. Another often suggested change is to focus on regulating not the act of copying – as this has become much more frequent and commonplace with the advent of digital copying – but rather the types of use and how they would influence the copyright owner. For example being much more flexible on personal and educational use which does not limit the *commercial* possibilities of the rights holder. There seems to be a need to balance the strong lobbying and influence of the content industry with the broader needs of society – something that not *per se* should limit the possibilities of creating value from original ideas and creations. Politicians have a clear responsibility in assuring that this balance is achieved.

Until a reform of copyright law is implemented the only way to standardizing the terms of use applicable to educational resources is through licensing.

---

<sup>2</sup> See for example the discussion in “[Remix: Making art and commerce thrive in the hybrid economy](#)” by Lawrence Lessig, 2008

### Which license(s) should be encouraged?

Open Educational Resources (OER) can be defined as teaching, learning and research resources either in the public domain or released under a license that permits their free use or re-purposing by others. Supporting the creation of OER is on the agenda of several ministries of education – either through direct funding or by providing guidance for teachers wishing to share their own content.

If the overarching goal is to provide teachers and students the highest degree of flexibility under current legislation this calls for a coherent licensing strategy from policy makers – and indeed any organisation supporting the production and dissemination of learning resources.

There is currently still a large number of “open” licenses to choose from but the by far most successful (and close to becoming the *de facto* standard) is Creative Commons (CC). Some of the advantages linked to the choice of a CC license are:

- Standardization. Widespread use on many major web sites and adapted for many national legislations<sup>3</sup>.
- Easy visual interpretation through a set of four icons (combined with easy to understand “human

3



**Attribution.** You let others copy, distribute, display and perform your copyrighted work – and derivative works based upon it – but only if they give you credit. All CC licenses contain this condition.



**Non-Commercial.** You let others copy, distribute, display and perform your work – and derivative works based upon it – but for non-commercial purposes only. If they want to use your work for commercial purposes, they must contact you for permission.



**Share Alike.** You allow others to distribute derivative works but only under the same conditions as you made your work available.



**No Derivatives.** You let others copy, distribute, display, and perform only verbatim copies of your work – not make derivative works based on it. If they want to translate, alter, transform, or combine your work with other works, they must contact you for permission.

*The four icons visually illustrating the usage rights associated with any of the six basic Creative Commons licenses. The effort undertaken to adapt these licenses to currently (December 2009) 52 different national legislations and more to come is a major step forward to have a globally, easily understandable set of licenses that will allow the sharing, adaptation and remixing of learning resources. Contrast the presentation of three of these icons with reading the fine print of custom End User license agreements or Terms of Use.*

readable” deeds) makes it quite easy to educate teachers and learners on the meaning of the individual licenses.

- In addition, CC licenses are machine-readable, and thus part of the search criteria that can be dealt with in standard search engines such as Google, Yahoo! or Creative Commons own searching facilities.
- They are global – surpassing cross-border differences in copyright legislation
- They are non-exclusive – allowing the creator to grant additional rights for example for commercial exploitation of the created works if e.g. entering a contract with a publisher.

### Increase educational impact of funding

In addition to choosing a specific (type of) license there are a number of other issues relevant to consider at a general level. Recommendations under current legislation would include:

- Whenever possible go for the most liberal licensing policy possible. A suggestion would be to use either CC-BY or putting publicly funded resources directly into public domain if possible. This will support the broadest range of use cases and thus allow the greatest impact of publicly funded educational resources. One part of this would of course also be to ensure that CC licenses are adapted to your national legislation.
- Ensure that resources are individually and correctly labelled with the appropriate license, including machine-readability to facilitate resource discovery.
- Make sure that the *format* of the resource also readily allows users to adapt it when this is permitted by license. In some cases this could mean providing it in multiple formats.
- Focus *awareness campaigns* targeting teachers and students on clear guidance on production of open educational resources and not the fine print of copyright law (as it probably isn’t enough to know national legislation anyway). Make it easy for teachers to share their content. Include IPR issues in both initial teacher training and continuing professional development.
- Engage with commercial publishers through for example the support of projects or products based on *new business models* building on collaboration aspects and not protectionism, bridging the commercial and sharing economies instead of separating them.

The range of cases that these recommendations can be applied to is quite broad and could include e.g. museums, galleries, archives and public broadcasting companies. It is however important to stress that user generated content is what to a large extent is meant with publicly funded learning resources and the ambition thus to a large extent is to allow for sharing and remixing of content already being produced by teachers – but now in the open and legally.

Following recommendations similar to those mentioned above should be a great help in increasing the impact when funding the production of educational resources. If a thorough strategy concerning IPR issues is not followed for such funding schemes users will have to ask for permission for a range of everyday uses.

As they are unlikely to do so, the educational impact of the resources will most likely be significantly diminished because of the risk of<sup>4</sup>:

- Users not understanding what they are allowed to do with the resources leads to diminished copying, sharing, adaptation and improved versions being created, even though that was probably one of the primary objectives of supporting the production of the original resources
- Due to uncertainty about whether permission would be required, those who *do* improve the resources keep their creativity in the dark rather than re-publishing online.
- Teachers are still forced to make a choice between becoming copyright experts or risking claims of copyright infringement if they want to use or combine materials, even when available under different “open” licenses.

---

<sup>4</sup> See also a recent discussion in the recommendations from ccLearn - <http://learn.creativecommons.org/wp-content/uploads/2009/07/cclearn-recommendations-increase-funding-impact-05-apr-09.pdf>

## Teachers and students

The tools for copying creative works protected by copyright laws have become so commonplace that they are often not even considered tools. Indeed just browsing the web inevitably leads to massive copying of creative works<sup>5</sup> and one of the first learned commands spanning across a suite of software applications is often copy/paste.

This on one side gives tremendous creative possibilities – but at the same time means that there has been a dramatic increase in *whom* and *what* kind of scenarios copyright laws regulate. Most notably they still focus on exactly *copying* in the first instance and not what these copies are used for. The current jungle of exceptions to copyright laws is too complicated for the people it regulates – especially when considering that much remixing of content will be across different national legislations.

With an increasing use of digital technology in education the scenarios where ordinary practice by teachers and students is regulated by copyright law are thus becoming more and more common. Most teachers, for example, develop handouts and other supplementary materials for their classes. Such handouts more often than not consist of materials of different origin, including insights from the teacher herself. Likewise, students often adapt existing content, for example when producing posters or reports that include pictures, graphs, or text from other sources mixed in with their own creations. To add to the complexity such resources are often published online afterwards (or at least within a VLE). These scenarios where content is adapted or “remixed” are becoming more and more common with the increasing use of technology.

The right to quote from texts is something that is incorporated in all current copyright legislation. When it comes to for example music and video this adds another level of complexity and confusion about what is actually allowed in which contexts. You wouldn’t think twice about quoting somebody in a blog post, whereas the opposite would presumably be the case if you instead wanted to include a few seconds from the latest Hollywood blockbuster to illustrate the point you were making<sup>6</sup>. This again is in severe contrast with the ambition to improve media literacy of students and have them create multimedia presentations as part of their education – and also with the general trend of having more and more information available as audio and video and not just text<sup>7</sup>. Of course this is just another illustration of the need for updating current copyright law to match the both prevalent and also desired practice – while still protecting rights owners from jeopardizing their investment in creating the original content.

---

<sup>55</sup> Which is presumably why this is one of the exceptions present in the current laws – but this just underlines that it is wrong to focus on the *copying* itself and not the intentions behind the use and accompanying impact to the rights holder.

<sup>6</sup> Not even when one of the most likely scenarios is that such quoting would be on a *fan* site – thus presumably increasing the income for the content creator instead of the opposite.

<sup>7</sup> Indeed you could easily argue that YouTube is an illustration of an unmet demand – including the prevalent copyright infringements.

### Compatibility matrix

#### Terms that can be used for a derivative work or adaptation

	BY	BY-NC	BY-NC-ND	BY-NC-SA	BY-ND	BY-SA
BY	✓	✓	✓	✓	✓	✓
BY-NC		✓	✓	✓		
BY-NC-ND						
BY-NC-SA				✓		
BY-ND						
BY-SA						✓

*The compatibility matrix illustrates why the use of CC-BY should be encouraged if the ambition is to allow downstream remixing of resources for teachers and students - adding a Share Alike or Non-commercial clause limits these possibilities significantly. This also clearly illustrates that even when sticking to just on "set" of open licenses remixing content legally is already potentially complex. See also David Wileys ["OER Remix: The game"](#) for an illustration of the problems associated with incompatibility between different open licenses.*

Under the current legislation the easiest way to permit such activities without breaking the law is to only use content licensed under a global open license that allows for combination, adaptation, translation and further sharing. This is especially true when the remixed works are often also published on the internet and thus made globally accessible<sup>8</sup>.

The by far most popular open licenses supporting such use are those of Creative Commons (CC). In particular the Creative Commons Attribution Only (CC BY) license meets these user needs most effectively. The more restrictive licenses should only be used when there is a clear and compelling reason to do so, and justified accordingly. Of course the other CC licenses do permit remixing to some degree but the possibilities are most certainly limited as illustrated in the table below.

<sup>8</sup> Currently the most prominent trend is still to keep remixes within closed environments – most notably LMS/VLE – creating (incompatible) information silos.

## Remixing open educational resources and incompatible content

As much content which would be very relevant for the types of remixing discussed above is not currently licensed under a (compatible or sufficiently) open license, teachers would frequently find themselves in a situation where they need to find the best solution to mixing what seems to be “incompatible” content. This may occur because the resource seems incomplete without third-party materials, or because there are no openly licensed versions of the needed materials. This is a very frequent situation for teachers (or other creators of open educational resources) when creating for example slide shows, lecture materials, educational toolkits, and so forth.

Even though educational use may very well fall under an exception to copyright law, such exceptions will vary greatly from country to country. This would mean that incorporating such “incompatible content” quite often would mean that the resulting resource may no longer be legally used in other countries. Almost inevitably, such mixed-license resources will also become incompatible with other resources, such as those licensed under a Creative Commons “Share Alike” license, which requires that derivatives be released under the same open license as the original. In short : Teachers creating such resources will feel insecure in sharing them, and downstream users may likewise decline to use them because they do not have the ability to do so under their own laws, or because they do not understand whether their laws permit use of these materials, or because such resources are not compatible with other open resources.

As these are just some of the limitations imposed when incorporating restricted third-party content in teacher produced resources it would seem to be a strong incentive for not doing so.

Under the current legislation and “content incompatibilities” the following general rules of practice can be recommended in order to move forward<sup>9</sup> - irrespective of whether the remixing is done by teachers or students:

- Identify the copyright holder and seek permission to relicense the materials using a compatible CC license. This is the safest approach but may quite often not be practical or possible (even though some copyright holders are often more than happy to share their work with the world).
- Find replacement materials already carrying a compatible CC license or that are in the public domain. The amount of open content is increasing rapidly – along with the possibilities for finding them through both educational repositories and more general search engines.
- Link to the incompatibly licensed resources instead of copying the content. For example through creating a bibliography of online resources.
- Create replacement materials. Though many resources (often the most valuable) are difficult to recreate, there are also quite a number of cases where recreating a graph or picture can be easier than to ask for permission to use the original under the desired terms.
- Delete or obscure the materials, thereby eliminating the issue.

---

<sup>9</sup> Adapted from the recommendations from ccLearn – [learn.creativecommons.org](http://learn.creativecommons.org)

- When the use of third-party content cannot be avoided, as a minimum requirement make sure to correctly attribute and cite the content, so that anyone can clearly know its original author and copyright status, and how it is distinct from the open license assigned to the overarching resource.

## Institution management

If any educational institution wants to actively contribute to the sharing of learning resources – ranging from just internal, to sharing on a global scale - there is no doubt that management has an important role to play. Especially when the purpose is to foster sharing, repurposing and improving existing learning resources *across borders* there is a number of IPR issues that complicate matters. Currently the best solution seems to be a strategy employing globally accepted open licenses – again most notably Creative Commons licenses.

Contributing to a global pool of OER has been embraced by a number of universities as a journey worth partaking in. The reasons for doing so are quite diverse<sup>10</sup> but definitely include:

- Providing access to quality educational materials globally, despite any economic, political or social disadvantages
- Improving the quality of teaching materials and education through increased sharing and feedback
- Sharing is a long-standing tradition within many academic disciplines – the opportunities new technology provides should be used to improve the ease and flexibility of this.
- Fostering *internal* and *external* cooperation between educators/researchers
- Branding, improving institutional reputation

Many of these institutional initiatives have now joined the [OpenCourseWare Consortium](#)<sup>11</sup> which by now has thousands of open courses available online. This also means that much advice relating to ensuring quality, risk management, educational impact, the economy involved and other aspects of becoming an OER institution are already available.

One recent concern often met<sup>12</sup> is how to both publish under an open license and maintain control over the institutions reputation as a high-quality producer of OER if downstream remixes of lower quality are produced. This has often led to use of some of the more restrictive versions of open licenses somewhat conflicting with the original aims of producing OER. The tendency however seems to move towards licensing learning resources under more liberal licenses<sup>13</sup>.

---

<sup>10</sup> For an introduction to the diverse set of motivations underlying this, and some of the experiences gained so far, see *Opening Up Education*, MIT Press, 2008 (CC-BY-NC-ND version: [http://mitpress.mit.edu/opening\\_up\\_education/](http://mitpress.mit.edu/opening_up_education/))

<sup>11</sup> The requirements for joining include publishing a minimum of 10 courses under an open license

<sup>12</sup> Many other concerns have of course been raised. An elaborate discussion – and recommendations for practice – within the context of universities can be found in the outputs of the TrustDR project – see <http://trustdr.ulster.ac.uk/>

<sup>13</sup> For a discussion on how institutional reputation can be protected through trademarks (U.S. centric), allowing licensing under CC-BY, see <http://learn.creativecommons.org/wp-content/uploads/2009/11/cc-licenses-and-trademarks.pdf>

While the discussion concerning open access to both learning resources and research has been very active for quite some time within higher education it is only beginning to take off in other parts of the educational sector. In many cases this is often build upon contributions from individuals instead of a coordinated and managed efforts from an institution. The types of initiatives range from centrally coordinated efforts like Wikiwijs in the Netherlands<sup>14</sup> to loosely coupled networks of teachers tailoring existing wiki-based and/or community building services to their needs.



Arrangeren   Ontwikkelen   Plaatsen   Beoordelen

**WIKIWIJS**   Home   PO   SBaO   VO

**zoek**

**Leerniveau**   [Verwijder selecties](#)  
**Toon**

**Doelgroep**   [Verwijder selecties](#)  
**Toon**

**Welkom op Wikiwijs!**

Wikiwijs is een open leermaterialenbank. Iedereen mag bijdragen: Wikiwijs is voor en door docenten.

Op Wikiwijs kun je materiaal zoeken, vinden, downloaden en gebruiken. Met de vier instrumenten die je terugvindt in de tabbladen bovenaan deze pagina kan nog meer:

[Arrangeren](#) - stel je les samen  
[Ontwikkelen](#) - maak materiaal  
[Plaatsen](#) - upload materiaal  
[Beoordelen](#) - geef je mening

De definitieve versie van Wikiwijs gaat in het schooljaar 2010/2011 van start. Dit is de proeffase,

*A recent example of a centrally coordinated and funded platform for the hosting of user generated content is the Dutch Wikiwijs – or Wikiwise. Wikiwijs is an open, internet-based platform, where teachers can find, download, (further) develop and share educational resources. The whole project is based on open source software, open content and open standards. Wikiwijs is inspired by the idea of wikis: collaborative development of content. Educational resources are developed by teachers, for teachers. Teachers can freely use anything they find in the Wikiwijs database in their classrooms. The scope of Wikiwijs is the whole Dutch educational system: from primary schools up to the universities.*

<sup>14</sup> See <http://openserviceblog.wordpress.com/english/> for an introduction of the project.

## Publishers and content providers

The content industry has quite naturally been the fierce proponent of current copyright law as it to a large extent has been modelled around their existing business models. In tune with the described need for a reform of copyright law there will be a concomitant need for new business models for the content industry, including educational publishers.

It is not the aim of this report to discuss this in great detail, but it is of importance to mention that there have been a number of recent developments attempting to build new business models focusing on bridging the “sharing economy” exemplified by the OER movement and the “commercial economy” exemplified by traditional educational publishers<sup>15</sup>.

Many of the first examples of combining open access with commercial publishing originate from scholarly publishing – to some extent driven by the advent of institutional repositories and the increasing number of mandates by university management to deposit all research there. This not only provided a new *raison d’être* to university libraries but at the same time forced publishers of academic journals to explore new business models<sup>16</sup>. Currently ten to fifteen percent of the 20–25,000 peer-reviewed journals are open access journals, as indexed by the Directory of Open Access Journals<sup>17</sup>. Where academic journals does represent a special case with a number of conditions not necessarily present in monograph publishing, some examples of educational publishers exploring business models building upon openly licensed content also exist.

A common trait between these seem to be to reverse the traditional “*you can have some content for free but will have to pay for premium content*” (typical examples include: textbook with free supplementary website; free sample chapters) to something more along the lines of “*premium content for free but pay for added value services*”. These added values can take a number of forms including charging for print versions, audio versions, services, activities and communities of different forms. Another major difference is of course also that all of these models are regulated by *non-exclusive* agreements between author and publisher in contrast to the currently prevalent *exclusive* agreements.

Some of the recent examples include:

- [Flat World Knowledge Inc.](#) a start up by earlier employees from Prentice Hall. They provide books for free online. Instead they charge (low-cost) for print-on-demand softcovers, audio books and chapters, self-print options etc. Books are open for instructors to modify for their own courses and the site includes a social learning network.

---

<sup>15</sup> For a more thorough discussion and examples of such “hybrid economies” see for example “[Remix: Making art and commerce thrive in the hybrid economy](#)”, Lawrence Lessig, 2008.

<sup>16</sup> For examples of both supply-side and demand-side business models for scholarly publishing see: <http://www.arl.org/sparc/publisher/incomemodels/>

<sup>17</sup> Details on the adoption of OA in academic journals: [http://en.wikipedia.org/wiki/Open\\_access\\_%28publishing%29](http://en.wikipedia.org/wiki/Open_access_%28publishing%29)

- [Bloomsbury Academic](#) - a new academic imprint (initiated September 2008) of Bloomsbury Publishing Plc, one of Europe's leading independent publishing houses. Their focus is currently on research based publications<sup>18</sup>. Their licensing scheme build upon an implementation of CC+<sup>19</sup>
- [OAPEN](#). Not a publisher but a European project exploring “*useful, exciting and beneficial ways of publishing scholarly work in Open Access*”. One important goal is to find a financial model which is appropriate to scholarly humanities monographs<sup>20</sup>, a publishing platform which is beneficial to all users and create a network of publishing partners across Europe and the rest of the world.

The partners are: Amsterdam University Press, Georg-August Universität Göttingen, Museum Tusulanum Press, Manchester University Press, Presses Universitaires de Lyon, Firenze University Press, University of Amsterdam, Leiden University

*“One reason for putting the whole text online free of charge is to avoid all the fuss and confusion that arises when publishers allow odd excerpts online and free downloads for limited periods etc. This may be good PR, but better to have a policy that is more focused on delivering what authors and readers want – which is to use the Web as a library.”*

– Frances Pinter, Bloomsbury Academic

We are still only at the beginning of exploring the combination of open licensing and supplementary commercial models. Common to “successful hybrids” from other areas are providing the possibility for users to contribute to the service as a by-product to getting what they want (e.g. improving Google's search algorithm by searching) thus providing a “dual free-ride”.

One thing that does seem clear is that the “locking out” approach of DRM technology is not likely to be an attractive choice for educational publishers in the long run. In short this would oppose user expectations and wishes and presumably produce more frustration than profit. (Early) examples from the music industry are not the most attractive models to build customer relationships upon.

<sup>18</sup> An interview with publisher Frances Pinter from Bloomsbury Academic is available from <http://creativecommons.org/weblog/entry/10100>. Also online is a video presentation (55 min) where Frances discusses possible future business models for scholarly publishing: [http://webcast.oii.ox.ac.uk/?view=Webcast&ID=20081121\\_268](http://webcast.oii.ox.ac.uk/?view=Webcast&ID=20081121_268))

<sup>19</sup> CC+ is a new feature that facilitates, through a protocol, a simple way to provide information on rights beyond those granted by the basic CC licences. The basic concept is to have a Creative Commons licence plus some other agreement that provides more permissions. For example, a work's Creative Commons licence might offer non-commercial rights. With CC+, the licence can also provide a link by which a user might secure rights beyond non-commercial rights – most obviously commercial rights, but also additional permissions or services such as warranty, permission to use without attribution, or even access to performance or physical media. See <http://wiki.creativecommons.org/CCPlus>

<sup>20</sup> Where science have been the absolute frontrunners in providing open access solutions.

## Repository owners

Educational repositories are by nature very diverse, but as a common trait they share teachers and/or students as their primary target group(s) of users and thus aim to support the needs of these. This would in turn mean that in relation to copyright issues the role of the repository will often focus on the same set of issues discussed under the heading of “Teachers and students” with the repository acting as a key enabler and facilitator in making rights issues something manageable during normal learning situations.

## Risk Management Strategy and policy framework

Repository owners should undertake an assessment of the legal risk associated with running their particular repository. Ideally such a strategy should be set up during the early stages of initiating new repositories and be revised throughout the repository life span.

The initial legal analysis undertaken should include the topics of: copyright, data protection/privacy, database directive, jurisdiction, criminal law and content provider liability. One of the outputs from this work should be a risk management strategy for the repository.

The risk management strategy should include identification (and quantification) of the potential risks – including copyright infringements – for both depositing users and those using the resources available in the repository. Such policy creation and maintenance involves phases of *recognition*, *assertion* and *expression* of rights – and the projection of the policy entails *dissemination*, *exposure* and *enforcement of rights*.

One way of assessing copyright risk is by estimating how likely they are to occur, what impact this would have on the repository, and setting in place a framework of remedial actions/policies to minimize adverse effects. The key aim for repository owners should be to have as simple and transparent licensing (and risk amelioration) processes as possible for users wishing to deposit or use resources.

Specifically on IPR issues, information should be publicly available and easy to find for all users describing:

- The license types supported, including reuse/derivative policy – presumably as part of general terms of use
- Take-down policy and process – this includes clearly assigning responsibility also to repository staff members
- Grievance process and procedure
- A site copyright statement (for material created by repository staff)

This list describes a minimum which should be found at any repository. It would also often be highly relevant to have additional *guidance material* for depositors,

Many existing repositories have been initialised with strategies not following such an ideal scenario but rather have had their policies implemented stepwise often starting from an approach of “better safe than

sorry” which in practice often leads to a “no risk” strategy and subsequent problems with mixed licenses etc. when policies are adjusted<sup>21</sup>.

To avoid such problems it is recommended that whenever possible repositories including deposits from teachers and institutions should adopt a standard open license – preferably CC-BY or possibly a choice between different CC licenses<sup>22</sup>.

### Monitoring copyright infringements

One of the important reasons for monitoring copyright infringements is to increase liability of the repository. The typical infringements are either adding copyrighted content (images, sound and video the most frequent examples) or adding open content with a wrong license (as a consequence of remixing content with incompatible licenses).

Many educational repositories still rely on central screening/monitoring procedures to spot these – often unintentional – copyright infringements. This is costly and often not very efficient<sup>23</sup> and as a side effect can probably also diminish the active participation in forming a responsible community around the repository. The alternative – or supplement – to a central screening of deposited content is of course involving the community of users through easy to find and use flagging tools, link to reporting forms and clear guidelines on the take-down policy of the repository. If the community is truly valued by its members they will have an interest in keeping it in a good and liable state also when it comes to IPR issues.

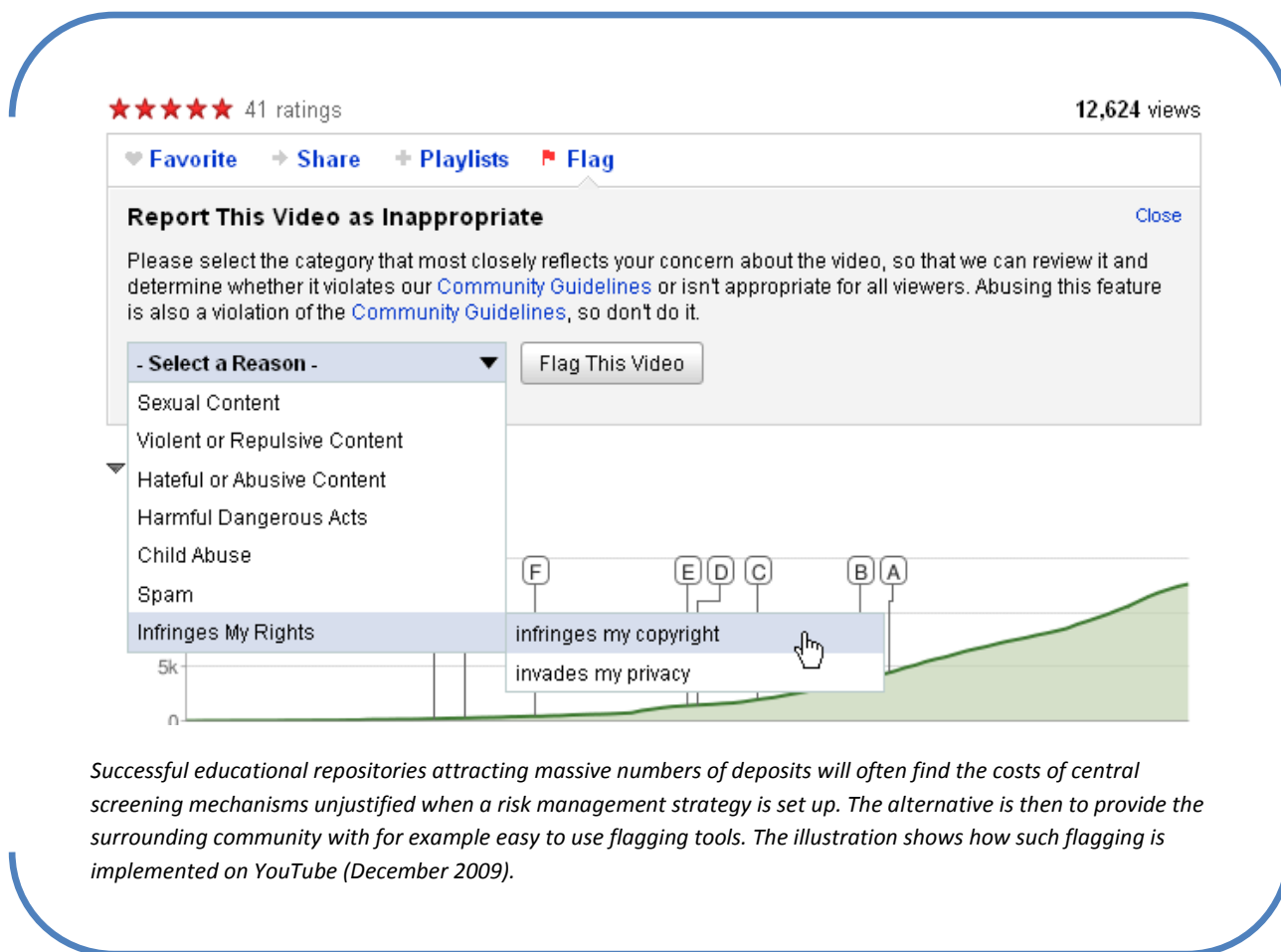
Knowing the identity of users, logging their deposits etc. – while protecting their privacy at the same time – is of course a component in such monitoring. In cases where national single sign on solutions for the educational sector exist it is recommended to use such existing infrastructure in educational repositories.

---

<sup>21</sup> One recent example of a repository undergoing a change of IPR policy is the start of JorumOpen (scheduled to open January 2010) representing a move away from custom and (relatively) closed licenses towards more general open licenses (Creative Commons) – in this case the openly licensed material will constitute a separate collection thus not necessarily allowing remixing with the thousands of other resources already deposited. Introductory videos and more information at <http://jorum.ac.uk>

<sup>22</sup> Examples of terms of use, deposit licenses, agreement samples and guidance material from repositories can be found in the EdReNe report [Agreement templates between repositories and content owners/providers](#).

<sup>23</sup> To help partly automate the process when dealing with text resources plagiarism scanners could be included in the moderation process (as done in e.g. many LMS/VLE for assignments)



## Expression of rights - User Interface issues

Allowing easy reporting of copyright infringements through the user interface of repositories is just one important aspects of communicating rights issues to users.

Other recommendations for repository owners focus on detailing what rights you give others *when depositing content* and expressing clearly *what you can do* with content you have found in the repository.

To this end repository owners should consider the following recommendations<sup>24</sup>:

- Use Creative Commons licenses when possible – and encourage the use of the least restrictive alternative possible/relevant. If you use CC licenses do not add additional terms. If you modify CC licenses, then the licenses on your site can no longer be called CC licenses. CC licenses consist of these three crucial parts: complete and standardized legal code, comprehensible summaries for non-lawyers, and attached machine-readable metadata to enable search and discovery. In addition, Creative Commons licenses are the most widely used licenses for open content. Rights can be expressed by combinations of four simple icons that can be easily

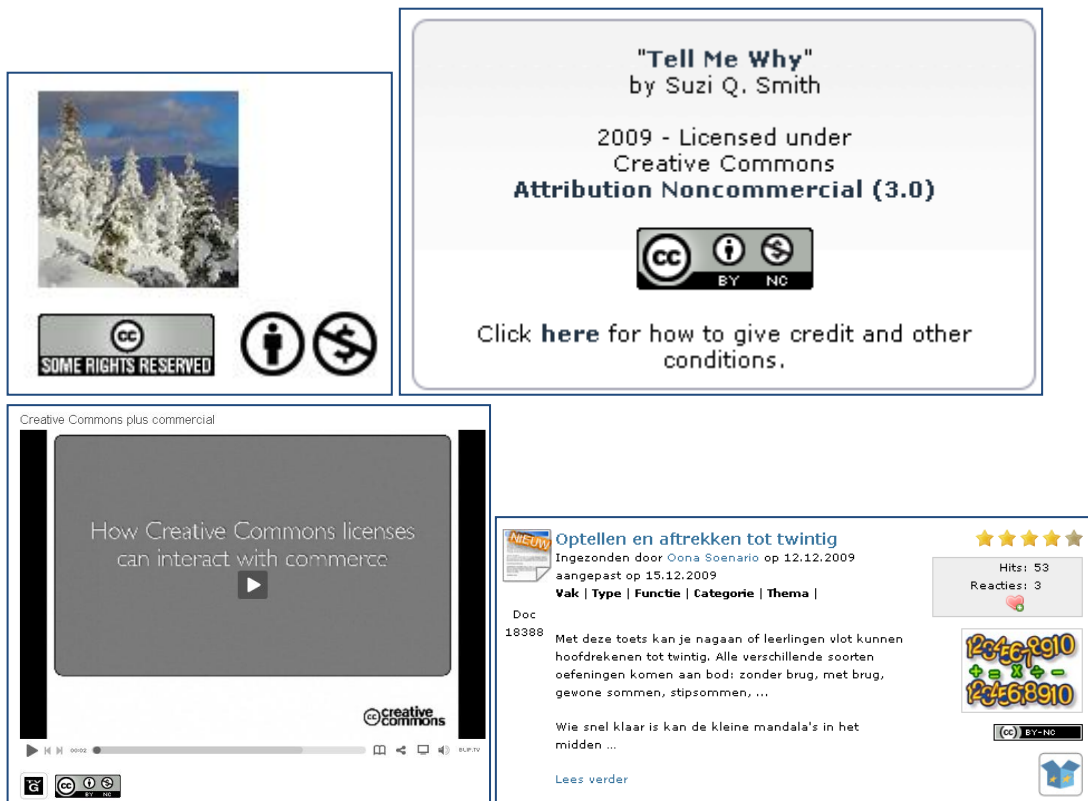
<sup>24</sup> These are abbreviated and slightly adapted from the recommendations of ccLearn – see <http://learn.creativecommons.org/wp-content/uploads/2009/04/cclearn-recommendations-publishing-your-oer-on-the-internet-05-apr-09.pdf>

implemented in the user interface of the repository both when depositing and consuming content. The ease of use is essential especially when copyright information is a mandatory part of the metadata entered - users who are not competent in copyright issues would often otherwise write whatever to proceed.

- Terms of Use (TOU) for the site should be easy to find and understand. It should preferably be accessible from every page on the site, as oftentimes users will be referred to one of these pages first via search engines. A readily accessible TOU section underlines the intention that these resources are meant for open use and remixing. Accessible in this context also means comprehensible i.e. it should be understandable by typical users of your site, who are probably not lawyers or experts on copyright law.
- The copyright status for the contents of the site (created by repository staff) should also be easy to find and understand – preferably signalled through the use of CC icons.
- Any changes to licensing policy should be noted and communicated as efficiently as possible to users.
- Ideally, every resource should be individually marked with its own CC license and – along with accompanying metadata - be specified using ccREL. This will allow for improved discovery through standard search tools<sup>25</sup>.
- Allow searching/filtering based on license types if the repository employs more than one. This is helpful in supporting different use cases.

---

<sup>25</sup> Creative Commons has developed a specific application of RDFa, called ccREL, which is instrumental to the way that CC licenses work. ccREL can also be used to specify other attributes of online resources, including subject areas, languages, quality metrics, etc. See <http://wiki.creativecommons.org/Metadata> for details.



Presenting license information in close connection with the individual resource through the use of CC icons is an intuitive way to communicate usage rights to end users – even for quite different types of content.. The examples above are from: Winter image from Flickr: <http://www.flickr.com/photos/paulmoody/> ; An a capella from ccMixer.org by [Suzi Q. Smith](#); A ccPlus video from blip.tv (<http://blip.tv/file/464274/>); A learning resource from klascement.net by [Oona Soenario](#).

## Guidance materials and awareness-raising

As discussed in the section on relevant policies and initiatives it is essential to increase the awareness of how to deal with copyright issues in education.

Apart from more general policies aiming to e.g. include this in initial teacher training and CPD activities and incorporating it into the curriculum, repositories can also play a role in providing guidance to users.


The appendix of this report list examples of how this has been approached in a number of different ways. It seems that some of the most successful initiatives are those aiming to *simplify issues* – but doing this within the law. In many cases this would for example mean focusing on how to use CC licensing instead of going through the latest revisions of copyright exceptions in national legislation.

Providing the information when needed is also imperative. In the case of repositories this would for example mean during depositing or when accessing resources. Repositories could also play a significant role in supporting the recommendations on remixing “incompatible” content by for example providing templates to use when requesting permission from rights holders.

Of course a reform of copyright law making it as intuitive to teachers and students as it should be, would by far be the best and also economically most sound approach.

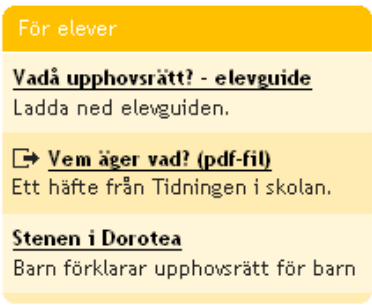
## Appendix: Awareness raising initiatives


The examples included in this appendix list a few of the initiatives that have been taken around Europe with the intention to provide guidance, help and raise awareness around IPR issues (copyright issues have been given prevalence as in the remainder of this report). Many examples similar to those presented here exist and have been part of the discussions at the workshops on rights issues. Those selected here are meant to illustrate different approaches to the same subject attempting to give food for thought on the types of information and activities that can be included when attempting to educate teachers and learners on copyright issues. Of course there are also a number of traditional books and courses covering the subject, and probably a number of other relevant types of examples that we have not been aware of.


<b>Title and URL</b>	CLARA (Norway) <a href="http://www.clara.no">http://www.clara.no</a>
<b>Description</b>	 <p>Clara is a website featuring information about rights clearance for copyright-protected material in Norway. Operated by the Clara Association, established by the following Norwegian rights management organisations: BONO, FONNO, GRAMO, Kopinor, LINO, Norwaco and TONO. The web site is typical of national websites for rights clearance providing contact with collective societies negotiating terms for use of copyrighted material. A special navigation feature of the suite is a guide where you find answers to your questions by selecting from two drop down lists – one specifying the types of work you wish to use, the other the way you want to use it.</p>
<b>Target group(s)</b>	General public who want to use these kinds of resources
<b>Format</b>	Web site, brochures
<b>Type</b>	Information portal for: Guidance / Help materials & Legislation.
<b>Context in which material is presented</b>	You need to go to the website to use the guide


<b>Title and URL</b>	<b>JISC Legal (newsletter)</b> <a href="http://www.jisclegal.ac.uk/news.htm">http://www.jisclegal.ac.uk/news.htm</a>
<b>Description</b>	 <p>The screenshot shows the JISC Legal website interface. The header includes the JISC Legal logo and the tagline 'Legal Guidance for ICT Use in Education and Research'. A navigation menu is visible with 'My Role' expanded to show options: Management, Tutor/Lecturer (highlighted), Research, IT, Library, Administration, and Information Governance. Below the menu, there is a section titled 'The End of the Story...' with a sub-heading 'Revised Code of Practice under Section 60 of the FOI (Scotland) Act 2002' and a brief description of a consultation on a revised code of practice.</p> <p>The use of IT in FE and HE raises many legal issues, and institutions must have awareness of compliance issues, and associated legal risk. JISC Legal's primary function is to ensure that legal compliance and legal issues are not, and do not become, obstacles to the use of IT by FE and HE. Navigation can be based on user's role in the educational sector.</p>
<b>Target group(s)</b>	For example: FE and HE staff.
<b>Format</b>	RSS feed, newsletter, webpage
<b>Type</b>	Guidance / Help materials; Political initiative; Legislation; Further reading;
<b>Context in which material is presented</b>	Website for reference and aggregation of legal news.


<p><b>Title and URL</b></p>	<p><b>Web2Rights project</b>  <a href="http://www.web2rights.org.uk/">http://www.web2rights.org.uk/</a></p>
<p><b>Description</b></p>	<p>Online toolkit and diagnostic flowcharts concerning IPR. The <i>flowchart format</i> is a good idea – the concrete examples do not produce a very positive picture, and might be ignored by teachers because they are too complicated. Also funding of the project has ended and it is unclear whether or how information provided will stay updated.</p>
<p><b>Target group(s)</b></p>	<p>Important that management puts up the poster and explicitly tells teachers about it.</p>
<p><b>Format</b></p>	<p>Target is HE in UK (lecturers). Not sure about actual use.</p>
<p><b>Type</b></p>	<p>Flowchart to be put on the wall in staff rooms, class rooms...</p>
<p><b>Context in which material is presented</b></p>	<p>Online diagnostic toolkit also available to supplement the physical posters/flow charts.</p>

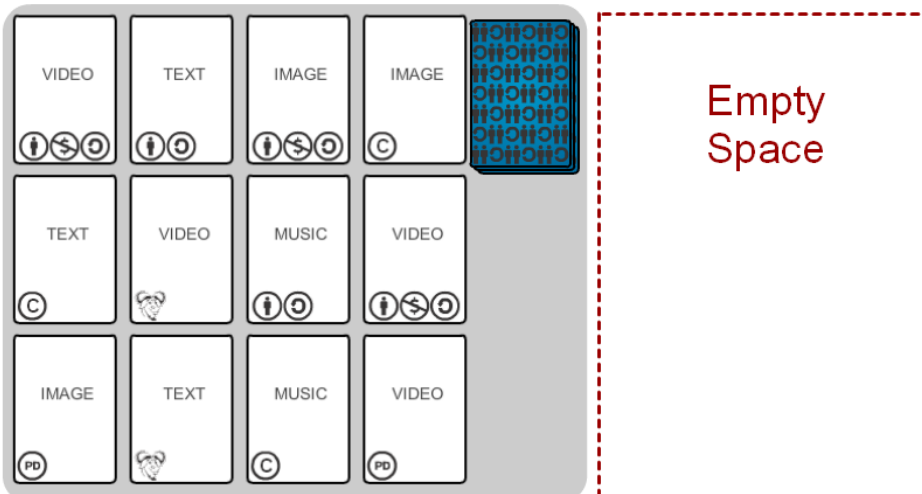
<b>Title and URL</b>	<b>Kolla Källan (Check the source)</b> <a href="http://kollakallan.skolverket.se/">http://kollakallan.skolverket.se/</a>
<b>Description</b>	 <p><i>Check the Source</i> is intended to be an aid for teaching children how to search for and evaluate web pages and other sources of information. On the website you can find shortcuts, practical tips and learning materials concerning source criticism and Internet safety for children. It holds a specific section on copyright issues targeting both teachers and learners. The main content of this section consist of thematic articles/guides and a FAQ . An interesting area is the examples of children explaining IPR to other children. <i>Check the Source</i> is a part of The Swedish National Agency for Education.</p>
<b>Target group(s)</b>	Teachers and students
<b>Format</b>	Don't know current outreach, but estimated to be the most popular service of its kind in Sweden.
<b>Type</b>	Web site; including printable student and teacher guides
<b>Context in which material is presented</b>	Guidance / Help materials. Need to go to the website to find answers.

<b>Title and URL</b>	<b>Legal materials in the classroom (Lovlige materialer i undervisningen)</b> <a href="http://www.laerit.dk/lovlige-materialer-i-undervisningen/">http://www.laerit.dk/lovlige-materialer-i-undervisningen/</a>
<b>Description</b>	 <p>Video title from commercial publisher. 4-5 minutes very practical titles e.g showing how to use Google to search for CC content, customizing your browser to search for CC content etc. 8 movies targeting teachers and 8 targeting teachers and pupils.</p>
<b>Target group(s)</b>	Commercial title (requires subscription, behind educational national single sign on solution) – don't know the outreach. Used to back (free) initiative for sharing videos (Danish TeacherTube)
<b>Format</b>	The format and the very practical how-to guides including pointers to finding CC licensed content is the most interesting part. Can be easily distributed through integration with widespread VLE (99% of primary and lower secondary schools).
<b>Type</b>	Course material for teacher training (and/or self study) and for use in classroom
<b>Context in which material is presented</b>	Short videos – many of them screencasts

<p><b>Title and URL</b></p>	<p><b>Lehrer Online (Teacher Online)</b>  <a href="http://www.lehrer-online.de/recht.php">http://www.lehrer-online.de/recht.php</a></p>
<p><b>Description</b></p>	 <p>This gives on-line practice-based information and assistance to teachers on legal aspects of the use of digital media at school and other education contexts. Each month a “case” from educational practice is presented (since 2005) – also holds online self-study course.</p>
<p><b>Target group(s)</b></p>	<p>Teachers, students</p>
<p><b>Format</b></p>	<p>Webpage</p>
<p><b>Type</b></p>	<p>General guidance, Practice examples</p>
<p><b>Context in which material is presented</b></p>	<p>Site devoted raising general awareness on legal issues and to give practical advice.</p>

<b>Title and URL</b>	<b>Wiki course about making e-learning materials</b> <a href="http://oerkursus.wordpress.com/">http://oerkursus.wordpress.com/</a>
<b>Description</b>	 <p>The screenshot shows the homepage of the course 'AVATUD ÕPPEMATERJALIDE KOOSTAMINE JA KASUTAMINE' (Creating and Using Learning Materials). It features logos for the European Union and the Estonian Future Fund. The main text indicates the course is starting in 2010. A sidebar lists an archive of posts from 2009.</p> <p>Course about making e-learning materials based on creative commons license. Duration: one term. Free of charge, voluntary course. Topics discussed include: what are cc licences, how to use them, how to take pictures, what to do with images, how to find cc images. Course leader is expert on digital rights in educational sector in Estonia.</p>
<b>Target group(s)</b>	Teachers, student teachers, educational technologists
<b>Format</b>	Web site, pageflake aggregator, course participants' blogs
<b>Type</b>	Course, project, blog
<b>Context in which material is presented</b>	Part of initial teacher training; part of wiki university courses  A course targeting in service training is also under development and can be found at: <a href="http://3fahug.havike.eenet.ee/ekursus/">http://3fahug.havike.eenet.ee/ekursus/</a>

<b>Title and URL</b>	<b>ccLearn</b> <a href="http://learn.creativecommons.org/">http://learn.creativecommons.org/</a>
<b>Description</b>	 <p>ccLearn is a division of Creative Commons dedicated to realizing the full potential of the internet to support open learning and open educational resources. Their mission is to minimize legal, technical, and social barriers to sharing and reuse of educational materials.</p>
<b>Target group(s)</b>	Teachers, policy makers, educational publishers, students
<b>Format</b>	Web site, repository, community site, conference organizer..
<b>Type</b>	Non-profit organisation specifically advocating OER
<b>Context in which material is presented</b>	Through the Creative Commons organisation when educational contexts are touched upon – i.e web site, conferences.

<b>Title and URL</b>	<p><b>OER Remix :: The Game</b>  <a href="http://www.opencontent.org/game/">http://www.opencontent.org/game/</a></p>
<b>Description</b>	<div style="text-align: center;"> <p><b>Remix Game ~Beta~</b></p> <p>Please send feedback to david.wiley@gmail.com.</p> </div>  <p>Online and card games designed by David Wiley to educate about current OER licensing schemes – and how remixing even content provided under different flavours of “open” can prove to be a not so easy task.</p>
<b>Target group(s)</b>	Teachers, students, the OER community
<b>Format</b>	Deck of cards; online game
<b>Type</b>	Supporting active learning – quick way to try remixing legally
<b>Context in which material is presented</b>	<p>Could be used in face-to-face contexts e.g. in classrooms, teacher training etc.</p> <p>Was on the agenda at EdReNe workshop 6.2</p>