

IPR in OER - Managing Risk

Diana Galpin

Research & Innovation Services

14th December 2009

Contents

Contents

- Copyright quick summary
- When might we be infringing?
- What if we get it wrong ?
- Managing IPR at an individual level
- Managing IPR at OER level
- Tools & guidance

Copyright quick summary

Copyright (1)

- Copyright, Designs & Patents Act 1988 (UK)
- International treaties & conventions
- National enforcement
 - Access to Websites not usually restricted by national boundaries
 - Materials may come from other jurisdictions
- Right exists without registration

Copyright (2)

- Works Protected
 - Literary, artistic, dramatic, musical, sound recordings, films, broadcasts, cable programmes, typographical arrangements, and software
- Qualification for protection
 - Protected work
 - Captured or recorded in some form
 - Originality (new) – *labour, skill, or judgement / creativity*
- Duration for many works 70 years death author (or last surviving), 50 yrs where author not identified
- Protects the **expression not the underlying idea**

Copyright (3)

- Ownership with author unless:
 - In course of employment
 - Contract otherwise stipulates (consultants)
 - Assignment
- Joint Authors or Collection of Works
- Author retains moral rights (unless waived)
 - Right to be identified as author
 - Integrity
 - No false attribution

Copyright (4)

- Exclusive right of owner
 - Copy & issue copies to the public
 - Rent or lend to the public
 - Perform, show or play in public
 - Communicate to public (broadcast & electronic transmission)
 - Make an adaptation (or do above in relation to adaptation)
- Infringement if do any of above without owner's consent

When might we be
infringing?

What can we do?

Research & Private Study – **not applicable**

- OERs are neither research or private
- **Criticism & Review – unlikely to be applicable all the time**
 - Must demonstrate it is for criticism & review
 - Work previously made available to public
 - Fair Dealing – this is a balancing act TIC scale, benefit, motives, consequences & other options available
 - Sufficient acknowledgement

What can we do?

- Incidental inclusion – **quite a fine line**
 - Is it really the “essence”
 - Accidental rather than deliberate some respite for inclusion of music & lyrics
- Things done for purpose of education & instruction
 - Only applies to **copy** provided not by reprography means – this precludes electronic.
 - Making publicly available on web doesn't apply

How not to infringe

- Its not a problem if it is all your own original work
- Only use TPM with consent/under license unless confident it falls within one of the permissible uses
- Consider replacing TPM with other material that is either your own/consented/under license
- Understand constraints of licence/permissions given (esp. CC)

How not to infringe

- Open Access **misconceptions**
 - You are free to use however you want
 - You are free to make available to others
- Orphan works

If in doubt link

Some examples

- Image/photographs
 - Look for sites giving free licence (e.g. <http://www.geograph.org.uk/>)
 - Remove image & link to it
 - Watermark across &/or reduce resolution
 - Ask if you can include
- Podcasts
 - Copyright in whole as well as script & performance rights
 - Adequate consents?



Harvard Reference Style Crib Sheet.

Introduction

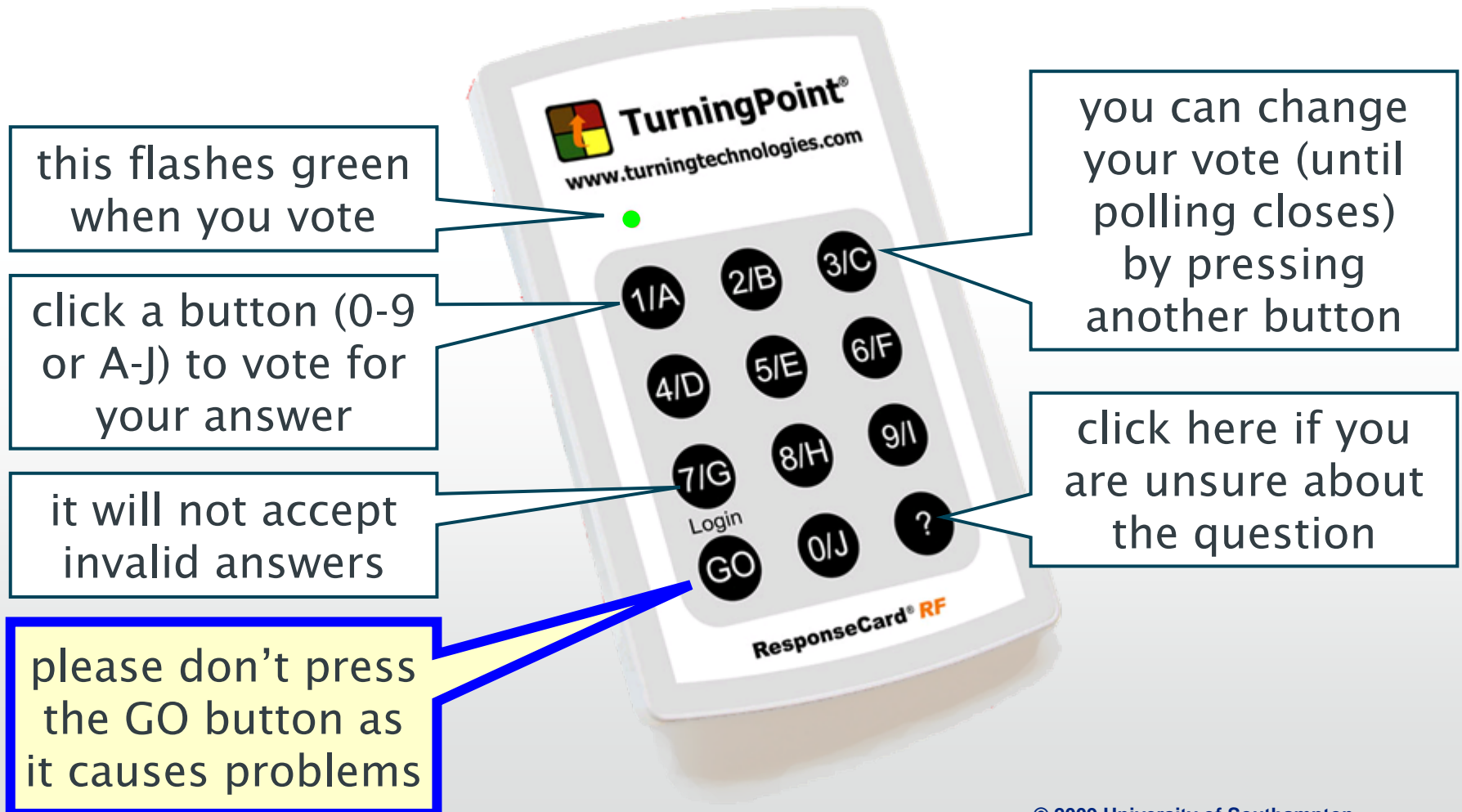
The type of reference list required may change depending on course requirements but this is just a reminder of the basic layout for the Harvard Reference style with links to further resources below. These notes summarise the very useful online guide offered by Anglian Ruskin University Library.

(http://libweb.anglia.ac.uk/referencing/harvard.htm?harvard_id=29#29)

| |
|---|
| Book |
| Author, Year. <i>Title of book</i> . Edition (only include this if not the first edition). Place of publication: Publisher. |
| Kirk, J. & Munday, R.J., 1988. <i>Narrative analysis</i> . 3rd ed. Bloomington: Indiana University Press. |
| Book Chapter |
| Chapter author, Year. Title of chapter. Book editor, <i>Title of book</i> . Place of publication: Publisher. Chapter or page reference. |
| Smith, J., 1975. A source of information. In W. Jones, ed. <i>One hundred and one ways to find information about health</i> . Oxford: Oxford University Press. Ch. 2. |
| Journal Articles |
| Author, Initials, Year. Title of article. <i>Full Title of Journal</i> , Volume number (Issue/Part number), Page numbers. |
| Perry, C., 2001. What health care assistants know about clean hands. <i>Nursing Times</i> , 97(22), p.63-64. |
| Newspaper Articles |
| Author, Initials, Year. Title of article. <i>Full Title of Newspaper</i> , Date. Page numbers. |
| Slapper, Gary, 2005. Corporate manslaughter: new issues for lawyers. <i>The Times</i> , 3 Sep. p.4-5. |
| Conference Papers |
| Authorship, Year. Full title of conference paper. In Editor or name of organisation. <i>Full title of conference</i> . Location, Date, Publisher : Place of publication |
| Brown, J., 2005. Evaluating surveys of transparent governance. In UNDESA, (United Nations Department of Economic and Social Affairs) <i>6th Global forum on reinventing government: towards participatory and transparent governance</i> . Seoul, Republic of Korea 24-27 May 2005. United Nations: New York. |

<Click Recount to view> Recount

How to vote using your zapper



What if we get it
wrong?

Potential outcomes

- Litigation - which if nothing else can = a lot of stress & time
- Injunctions / Orders for destruction / recall / permanent removal
- Damages
 - general, exemplary & additional statutory
 - Account of Profit
- Criminal – fines &/or imprisonment
- Litigation costs if you lose!
- Reputational damage

Factors that can reduce damages/cost

- Innocently acquired
- Proof that no loss has followed
- No profit by infringer
- Rapid take down to prevent ongoing infringement
- Apology

Managing IPR at an individual level

Start as you mean to go on

- Nothing is a problem if it is your original material
- Think strategically about the licence you want to release it under
- Agree with joint owners what you can each do & on what licence will release
- Keep record of what TPM you include & relevant licence terms
- Only use materials you have a licence for
- Don't release TPM on a CC licence unless you have permission

Managing IPR at OER level

What type of Educational Repository

- Institutional only
- Closed group of known registered depositors & users
- Open to approved to deposit but for all to use
- Completely open (deposit & use)

Infringement risk different?

- Primary infringement
 - Vicarious liability for staff
- Secondary infringement
 - Distribute & deal in infringing copies

How to minimize risk

- Due Diligence – basic level of enquiry at least
- Deposit agreement
 - Require confirmation own work &/or all necessary consents for TPM
 - Agreement on use of which CC / user t&cs - embed
- User agreement
 - CC which one? Is it suitable for all works? Compatible with TPM?
- Take down policy
- Moderation / peer review of deposits
- Consider the future

Tools & Guidance

Tools & Guidance

- <http://www.jisclegal.ac.uk/Default.aspx?tabid=573>
- <http://www.web2rights.org.uk/>
- <http://www.ipo.gov.uk/types/copy.htm>
- http://deposit.jorum.ac.uk/login/index_ediauth.php
- <http://creativecommons.org/international/uk/>