

Lecture Capture: Compliance

Introduction

This paper outlines the essential legal issues to consider when undertaking lecture capture.

- **Copyright**

Where an employee creates a literary, dramatic, musical, artistic work, or a film work, in the course of their employment, the copyright in the work will belong to the employer, unless there is an agreement between employee and employer to the contrary (s. 11(2) Copyright, Designs & Patents Act 1988).

University Position

The University adopted the Post-92 National Agreement in 1992 - the copyright in course materials produced by the employee in the course employment for the purposes of the curriculum of a course run by the University and produced, used or disseminated by the University shall belong to the University (Procedures for Lecturing Staff).

Section 11(2) does not, however, apply to sound recordings.

University Position

The University will obtain a licence to record and reuse audio recordings of lectures.

The copyright in materials created by visiting lectures are owned by the lecturer or their employer, unless otherwise agreed.

University Position

The University will obtain a licence to record and reuse lectures given by visiting lecturers.

- **Performance Rights**

The performer is the first owner of the performance, not the employer (Part II Copyright, Designs & Patents Act 1988).

Performers have rights in their performance and any recording, film or broadcast of that performance. A recording means a film, or sound recording, made directly from the live performance, a broadcast of the performance, or made from another recording of it (s.180(2) Copyright, Designs & Patents Act 1988).

Performer's rights last for 50 years from the end of the year of the performance, unless the recording of the performance, other than a sound recording, is released, in which case it is 50 years from the year of release. For sound recordings published within 50 years, a performer's rights extend to 70 years from the year of the recording, or year of release.

Subject to certain exceptions, a performer's rights are infringed where a recording of a substantial part of a performance is made without consent or where copies of that performance are issued to the public without consent (s.182 Copyright, Designs & Patents Act 1988).

The performance right can be licensed or be assigned by the performer.

A performer is not defined, only a performance which could be a dramatic or musical performance, a reading or recitation of a literary work, or a performance of a variety act or any similar presentation (s.180(2) Copyright, Designs & Patents Act 1988). The performance must be live but does not need to be public; an audience is not required.

University Position

The University will seek a licence to record and reuse lectures from lecturers.

If others, including students, actively participate in lecture recordings, then they may have rights to their individual performance and consent to record and reuse lectures will be needed from all participants.

University Position

The University will seek a licence to record and reuse lectures from participants who make a substantial contribution to a lecture or teaching session (i.e they present something).

- **Moral Rights**

For work created in the course of their employment the moral rights of employees are automatically transferred to their employer. However this is not true in the case of a performance where rights remain with the employee (s.205(C and F) Copyright, Designs & Patents Act 1988).

The moral rights of students and visiting lecturers who create or perform in a lecture are retained by them.

To be enforceable moral rights must be asserted.

University Position

The University will obtain a waiver to reuse lectures from participants.

- **Third-Party Rights**

Where the copyright has expired in a work, it can be freely used. Where a work is still in copyright, the employer is required to either seek permission from the copyright holder, ensure a licence is obtained or rely on a legal exception.

Exceptions provided for by fair dealing do not extend to copying and storing works via lecture

capture, without permission or licence.

Permission or licence therefore needs to cover both the lecture itself and also subsequent reuse.

It is permissible for a disabled person, or someone acting on their behalf, to make a copy of a lecture without seeking permission nor requiring a licence if they would be at a disadvantage to someone who isn't disabled (s.31 Copyright Designs & Patents Act 1988). Other rights will still apply.

University Position

The University requires all lecturers to ensure they have obtained the necessary permissions, licence or use a legal exception as a defence to use all in copyright third-party material for both lecture, recording and reuse.

- **Data Protection**

The Data Protection Act 2018 and General Data Protection Regulation allow individuals to control how information about them is to be used. By recording identifiable living individuals involves personal data and as such any processing must be done fairly and in accordance with the data protection principles. To be fair, it is necessary to inform all participants that a lecture is being recorded, to what purpose, and to provide participants with the option to opt out, an area, where they are not visible. Lectures cannot be reused for any purpose other than that outlined to participants.

University Position

The University will ensure appropriate signage is positioned in lecture theatres, where applicable, informing participants that lectures maybe recorded and informing them of their rights.

Where there is likely to be a significant contribution or presentation by students or others a signed consent form is preferred.

University Position

The University requires all lecturers to ensure that signed consent is obtained from all significant contributors.

- **Accessibility**

There is an obligation to make reasonable adjustments under the Equality Act 2010. Reasonable adjustments can include the provision of alternative formats, transcription and subtitles; adjustments must be practical, appropriate and to meet the need only.

University Position

The University will ensure wherever possible that an accessible format of all lecture recordings is made available to those for whom a reasonable adjustment has been identified.

- **Liability**

The University maybe liable for the actions of its employers, including claims for breaching third-party rights and defamatory remarks.

University Position

The University will provide advice and guidance to all lecturers. Recorded lectures will be supported by a take down notice, procedure and feedback form.

Recommendations

It is recommended that the University takes the following actions -

Position	Action
The University retains the copyright in all materials created by staff for the purposes of delivering the curriculum of a course run by the University, including the material delivered in lectures.	Academic and non-academic contracts are compliant.
The University will obtain a licence to record and reuse audio recordings of lectures.	Consent form to be updated and approved.
The University will need to obtain a licence to record and reuse lectures given by visiting lectures.	Consent form to be updated and approved.
The University will seek a performance rights licence from lecturers to record and reuse lectures	Consent form to be updated and approved.
The University will seek a performance rights licence from active participants.to record and reuse lectures	Consent form to be updated and approved.
The University will obtain a waiver to reuse lectures from participants.	Consent form to be updated and approved.

Position	Action
The University requires all lecturers to ensure they have obtained the necessary permissions, licence or use a legal exception as a justification to use all in copyright third-party material for both lecture, recording and reuse.	Consent form to be updated and approved.
The University will ensure appropriate signage is positioned in lecture theatres, where applicable, informing participants that lectures may be recorded and informing them of their rights.	Data protection signage displayed in appropriate spaces.
The University will ensure wherever possible that an accessible format of all lecture recordings is made available to those for whom a reasonable adjustment has been identified.	Requirement to be built into lecture capture user requirements for tender process.
The University will provide advice and guidance to all lecturers around potential liability.	Information, advice and guidance to be reviewed and disseminated.
Recorded lectures will be supported by a take down notice, procedure and feedback form.	Take down notice and procedure to be developed and approved.

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