

# Copyright and Fair Use Guide for the Open University of Sri Lanka

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## **1.0 Preamble**

The Copyright and Fair Use Guide of the Open University of Sri Lanka (OUSL) address the ‘ethical and legal use of information’ to be referred when designing and developing OUSL course material (print, Audio-visual and online learning resources), by all related parties such as authors, compilers and presenters. The guidelines also address ‘educational fair use’ of information and literary resources in performing academic activities, research and scholarly work.

Adopting necessary guidelines in using literary and scholarly resources when producing OUSL course materials by teachers and in completing the learning tasks by the students are crucial to avoid violation of the copyright of other creators of intellectual property.

The Intellectual Property Act, No. 36 of 2003 is accessible in the Library web page: <http://lib.ou.ac.lk/wp-content/uploads/2015/12/IPR-Act.pdf> for, can be accessed at WIPO page: <http://www.wipo.int/edocs/lexdocs/laws/en/lk/lk004en.pdf>

For more information please refer, <https://www.nipo.gov.lk/web/index.php?lang=en>

## **2.0 Purpose of the guidelines**

Purpose of these guidelines is as follows:

1. To create an awareness of the concept Copyright under the intellectual property law;
2. To provide guidelines in using copyrighted resources for academic and research purposes;
3. To provide understanding on the rights of the copyright owner (OUSL as owner);
4. To introduce Open Licenses and related attributes; and
5. To describe procedure for obtaining copyright clearance for certain text, graphics, sound etc. to be used by OUSL academic staff.

## **3.0 Introduction to Copyright**

### **3.1 Definition of Copyright**

Copyright refers to rights given to creators in their original works. The concept of copyright protects one’s intellectual contribution from being copied or being adopted by another person, without giving due acknowledgement to the original owner.

Copyright is an important legal concept where clear awareness is necessary in using copyrighted materials and literary resources for academic and other purposes. It is also necessary to protect the educational materials created by the OUSL teachers and researchers from being copied by other parties, without obtaining due permission.

The subject matter of copyright relates to literary and artistic creations, such as books, music, paintings and sculptures, films and technology-based works (e.g., computer programs and electronic databases). The term “literary and artistic works” includes every original work of authorship, irrespective of its literary or artistic merit (Artistic merit is the perceived artistic quality or value of any given work).

### **3.2 Rights of the copyright owner**

Rights of a copyright owner can be basically divided into two phases; namely, economic rights and moral rights.

#### **3.2.1 Economic rights**

Economic rights of a copyright owner accord certain rights which can be exploited by the owners and gain economic advantages as follow:

- i. Reproduction of the work;
- ii. Translation of the work;
- iii. Adaptation, arrangement or other transformation of the work;
- iv. Public distribution of the original and each copy of the work by sale, rental, export or otherwise;
- v. Rental of the original or a copy of an audiovisual work (see *Economic rights. Sec. 10. IPR Act, no. 36 of 2003*);
- vi. Importation of copies of the work;
- vii. Public display of the original or a copy of the work;
- viii. Public performance of the work;
- ix. Broadcasting of the work; and,
- x. Other means of communication to the public of the work.

#### **3.2.2 Moral rights**

Where moral rights are concerned, these rights are independent from economic rights and can be considered as paternity rights attributed to the particular creation. Basically, the concept of moral rights recognizes the right to claim authorship of a work (right of paternity/ attribution) and right to object to any distortion or modification of a work (right of integrity). Thus, it is clear that the economic rights coupled with moral rights grant an owner of copyright an exclusive control over his or her rights.

In terms of the duration of copyright protection, the IP Act provides that, ‘the copyright shall be protected during the life time of the author and for a further period of seventy years from the date of his death.’ (*Sec. 13, IP Act, 2003*)

The University recognizes both economic and moral rights of the creators of the works in accordance with the *IP Act, No.36 of 2003*.

These include the economic exploitation of the work, right of fair attribution, and the need for work not to be altered or used in such a way that it harms the reputation of the Creator. Where a Creator agrees to be involved in research activities as part of a project between the University (or a University Commercialization Company) and an external sponsor or other third party, the Creator may be required to provide a written consent in respect of the Creator's moral rights in relation to certain works that may be created during the project prior to work commencing.

However, the creator may waive any his/her moral rights to the University, in writing and clearly specifies the rights or rights waived and the circumstances to which the waiver applies. (See Section 10(3) of the IP Act, 2003).

### **3.3 What can be copyrighted?**

The copyright protection arises automatically when a work is created. To get the copyright protection, the ideas in the work do not need to be original, but the form of expression must be an original creation by the author.

As stipulated in the Intellectual Property Act, No.36 of 2003 Sri Lanka, the following works shall be protected as literary, artistic or scientific work (hereinafter referred to as "works") which are original intellectual creations in the literary, artistic and scientific domain, including and in particular:

- i. Books, pamphlets, articles, computer programs and other writings;
- ii. Speeches, lectures, addresses, sermons and other oral works;
- iii. Dramatic, dramatic-musical works, pantomimes, choreographic works and other works created for stage productions;
- iv. Stage production of works and expressions of folklore that are apt for such productions;
- v. Musical works, with or without accompanying words;
- vi. Audiovisual works;
- vii. Works of architecture;
- viii. Works of drawing, painting, sculpture, engraving, lithography, tapestry and other works of fine art;
- ix. Photographic works;
- x. Works of applied art; and
- xi. Illustrations, maps, plans, sketches and three dimensional works relative to geography, topography, architecture or science.

### 3.4 Works not protected under Copyright

No protection shall be extended for any of the following works;

- (a) any idea, procedure, system, method of operation, concept, principle, discovery or mere data, even if expressed, described, explained, illustrated or embodied in a work,
- (b) any official text of a legislative, administrative or legal nature, as well as any official translation,
- (c) news of the day published, broadcasted, or publicly communicated by any other means.

### 4.0 Introduction to the concept of Fair Use (FU)

The 'Fair Use' indicates using copyrighted materials (full or in part) may, under certain circumstances, be quoted verbatim for purposes such as criticism, news reporting, teaching, and educational purposes and research, without obtaining permission from the copyright holder.

#### 4.1 Instances where the FU applies

According to the Act, the following uses shall be permitted without the authorization of the owner of the copyright (paragraph (a) of subsection (1) of Section. 9 of the IP Act, 2003).

##### 4.1.1 Reproduction

###### 4.1.1.1 Teaching purposes

- (a) the reproduction of a short part of a published work for preparation of teaching materials for *teaching purposes* by way of illustration, in writing or sound or visual recordings, provided that the reproduction is compatible with fair practice and does not exceed the extent justified by the purpose of such reproduction (see Section 4.3),
- (b) the reprographic (photocopying, scanning etc.) reproduction for *face to face teaching in any educational institution*- the activities of which do not serve direct or indirect commercial gain provided that the act of reproduction is an isolated *one occurring*.

However, due reference should be given on all copies made, provided that any reproduction under Paragraphs(a) and (b)of the of subsection 1and subsection 2 does not conflict with the normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author.

#### 4.1.1.2 The private reproduction

A published work in a single copy shall be permitted, without the authorization of the owner of the copyright, where the reproduction is made by a physical person from a lawful copy of such work exclusively for his own personal purposes, provided that any reproduction under Paragraphs(a) and (b) of the of subsection 1 and subsection 2 do not conflict with the normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author.

#### 4.1.2 Instances where reproduction is not permitted.

Permission will not be extended to the reproduction of:

- a work of architecture in the form of a building or other constructions;
- the whole or a substantial part of a book or of a musical work in the form of notations;
- the whole or a substantial part of a database
- a computer program, except as provided in subsection (7) of the Act; and
- any work, in case the reproduction would conflict with the legitimate interests of the owner of the copyright.

#### 4.1.3 Computer programs

The Act stipulates that a reproduction of a single copy or the adaptation of a computer program by the lawful owner of a copy of that computer programme, shall be permitted, without the authorization of the owner of copyright, provided that the copy or adaptation is necessary:

- (i) for use of the computer program with a computer for the purpose and extent for which the computer program has been obtained; and
- (ii) for archival purposes and for replacement of the lawfully owned copy of the computer program in the event that the said copy of the computer program is lost, destroyed or rendered unusable.

#### 4.1.4 Displays permitted under FU

Public display of originals or copies of works shall be permitted, without the authorization of the owner of copyright provided that;

- the display is made other than by device or process,
- the work has been published or the original or the copy displayed has been sold; and
- given away or otherwise transferred to another person by the author or his successor in title.

#### **4.1.5 Quoting part of the copyrighted text under FU**

- As per the Act, reproduction of short part of a published work shall be permitted, without authorization of the owner of copyright in the form of a quotation.
- It is also provided in the Act that the reproduction is compatible with fair practice and does not exceed the extent justified by the purpose of such reproduction. The quotation shall be accompanied by an indication of the source and the name of the author, if his name appears in the work from which the quotation is taken.
- The user of the quotation may use any standard reference format.

(Section 9 of the IP Act, 2003).

#### **4.2 Fair Use conditions applicable for Libraries**

Any library or archives, whose activities do not serve any direct or indirect commercial gain may, make a single copy of the work by reprographic reproduction without the authorization of the owner of copyright as per the following conditions:

- (i) the library or archives is satisfied that the copy will be used solely for the purposes of scholarship or private research;
- (ii) the act of reproduction is an isolated occurrence, occurring if repeated, on separate and unrelated occasions, where the copy is made in order to;
  - preserve,
  - replace a copy which has been lost,
  - safeguard destroyed or rendered unusable copy in the permanent collection of another similar library or archives,
  - obtain a copy that is not possible to acquire under reasonable conditions.

#### **4.3 Permissible amount of work under FU**

- Text material:
  - Up to 10 percent of the total or 1,000 words, whichever is less.
  - An entire poem of less than 250 words may be used, but no more than three poems by one poet or five poems by different authors in an anthology. For poems exceeding 250 words, 250 words should be used but no more than three excerpts from one poet or five excerpts from different poets in the same work.
- Motion media, e.g., movies, film clips, excerpts from television shows, etc.:
  - Up to 10 percent of the total or three minutes, whichever is less.

- Music, lyrics, and music video:
  - Up to 10 percent of the work but no more than 30 seconds of the music or lyrics from an individual musical work.
- Illustrations or photographs:
  - No more than five images from one artist or photographer.
  - No more than 10% or 15 images, whichever is less, from a collection.
- Numerical data sets:
  - Up to 10 percent or 2,500 fields or cell entries, whichever is less, from a copyrighted database or data table.

## **5.0 Ownership of Copyright**

### **5.1 Copyright ownership of the Open University of Sri Lanka**

Unless otherwise provided in this guideline, the University owns intellectual materials created by staff:

- a) during the course of employment with the University; or
  - b) using University resources IP created in or during the course of employment with the University includes IP created;
  - c) in furtherance of the University's goals through employer-mandated directives;
  - d) in any type of Teaching Material;
  - e) while participating in any project or program supported by funding obtained or provided by the University;
  - f) where the IP is a component of team work of which the Staff member is a team member and other Staff are also team members; and
  - g) where, creation has resulted from the use of or incorporates 'Background IP', but does not include any IP in Scholarly Works.
- The University shall make a clear statement in all agreements, appointment etc. where related, in generating intellectual content regarding the ownership of copyright of the University.
  - Intellectual content may be the course materials, scholarly communication and work such as research papers, lectures, speeches, etc. only those were initiated and funded by the university.

### **5.2 Intellectual materials/property developed by affiliates of the university**

The University does not assert ownership of IP created by Affiliates, other than for Intellectual materials:

- a) created in and during the course of the appointment with the University, while working on a University project;

- b) using University Resources;
- c) as Teaching Materials;
- d) while participating in any project or program supported by funding obtained or provided by or through the University;
- e) where the IP is a component of IP generated by a team of which the Affiliate is a team member and other team members are Staff and/or Students; and/or
- f) where creation has resulted from the use of or incorporates Background IP

### 5.3 Intellectual material/property developed by students

The University does not assert ownership of IP created by Students, except as set out in instances given below:

- i. Where a Student agrees to assist in the creation of Teaching Material;
- ii. Where a Student agrees to be involved in research activities as part of a project between the University (or a University Commercialization Company);
- iii. Students working on collaborative projects or on ongoing long term projects that give rise to the joint creation of IP, or interdependent IP, may be required to agree to an assignment to the University of the Student's IP in relation to those projects;
- iv. Where a Faculty or Institute may have a policy which requires all enrolling Students of that Faculty or Institute to assign all IP created in the course of their study with that Faculty or Institute to the University as a condition of enrolment;
- v. The University owns the IP created by students under above mentioned circumstances only where the IP has been separately assigned to the University by deed or agreement; and
- vi. Unless otherwise explicitly agreed, the copyright of Students' theses or Scholarly Work will be owned by the university.

### 6.0 Using Open Licenses

A license is a legal document that specifies what can and what cannot be copied or used in a work. A License grants permissions and clearly mentions the requirements of using a work and limitations.

An open license is a license agreement which contains provisions that allow other parties to reuse another creator's work, giving them four main levels of freedoms which are given below. Broadly speaking, an **openlicense** is one that grants permission to access, re-use and redistribute a work with few or no restrictions.

The person who wishes to release a material under Creative Commons (CC) License is the copyright owner of the entire work. However the university has its own **Open Education**

**Resources (OER)Policy** for the knowledge materials created under the ownership of OUSL.

However a comprehensive account on Open Licensing can be obtained from;  
<https://creativecommons.org/licenses/>

## **7.0 Copyright Clearance**

### **7.1 Copyright ownership statement**

All published or distributed material in which the University owns the copyright must include the following copyright statement:

© Copyright The Open University of Sri Lanka [year]

### **7.2 Obtaining and Issuing of Copyright Clearance**

The Copyright Clearance Unit (CCU) shall analyse the individual cases forwarded to the Unit for obtaining copyright clearance before publishing. The Unit will obtain an authorization letter for each work/ part of work/ image/ model/ formula etc. from the original creator of the work to be used in creating intellectual property under the OUSL copyright.

Any issue relating to the issuance of clearance shall be submitted to the ‘University Course Development Committee’(UCDC)which will be the policy making authority for the University copyright related issues. Resolving Copyright-related disputes will be discussed in section 7.3.

### **7.3 Resolution of copyright-related disputes**

The disputes arising under or as a result of this guideline, including disputes relating to (a) copyright ownership, (b) identification of Contributors and (c) assignment of copyrights, should be forwarded to the University Course Development Committee through the Copyright Clearance Unit.

Any copyright-related disputes may be resolved according to an investigation procedure set out by a University By-Law.

### **7.4 Application Form for Copyright Clearance(pl. see attachment)**

This guideline and parts of it will be subject to edit depending on the requirements of the University, however within the Intellectual Property Act, 2003.

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