

Rights management for MOOCs

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Abstract

Massive Open Online Courses (MOOCs) are courses aimed at unlimited participation and access via the web. This note, originally written as part of a Norwegian government report about MOOCs, focus and the legal and financial aspects of MOOCs, including copyright, access rules, licencing and funding.

1 Rights management

The materials that make up a MOOC's courseware are literary and artistic works, and the rights to such materials are regulated by the Copyright Act.

The basic principle in the Copyright Act is that the person who creates a literary and artistic work, owns the rights to it. This principle also applies if the course materials are openly available on the Internet. A new technology for distributing such works does not create a new state of law.

However, new technology may cause new problems for *managing* copyright. When a literary and artistic work is distributed in the form of physical copies, the rights holder can manage his/her rights by charging for copies. Such copyright management is not immediately applicable when distribution of physical copies is replaced with online distribution of electronic materials.

1.1 User payment solutions adapted to the Internet

In 2014, the entertainment industry have succeeded in adapting to the Internet. Many different models are being used by different rights holders. One can charge for downloads of individual works, where the copy is owned permanently, (e.g. iTunes Store), or a subscription service which, for a fee, gives you access to all of the material the distributor has the rights to for as long as you subscribe, (e.g. Netflix).

In order for such payment solutions to function, however, resources cannot be openly available on the Internet, but placed behind a so-called paywall.

But the solutions do exist and they do work. There is thus nothing preventing the distributors of course materials for MOOCs to adapt some of the right mangement solutions currently used by the entertainment industry.

1.2 Extended collective licensing

In the Nordic countries there is already a well-functioning system for extended collective licensing, which is particularly beneficial for the education sector. The scheme is called “Extended Collective Licensing” and is explicitly regulated by the Norwegian Copyright Act (Sections 30-38b).

In brief, extended collective licensing entails that an organisation representing licensees (in Norway this is *Kopinor*) registers the extent to which works are used in various institutions, including schools and higher education institutions. Based on these registrations, the organisation will collect a fee for use from the institutions.

Extended collective licensing was established in part because cheap photocopying technology resulted in photocopies to some extent replacing purchases of original copies.

The advantage of extended collective licensing over the user fee solutions discussed in the previous paragraph is that the resources can be published openly on the Internet, instead of hidden behind a paywall.

There is likely nothing preventing an expansion of the extended collective licensing scheme to cover downloading of course materials and use of digital course by users of MOOCs. The parties, i.e. Kopinor and user representatives, have already attempted to adapt the present system to digital downloading and use. However, the unlimited participation implicit in the MOOC concept will probably lead to much more massive use than conventional use of downloadable materials. To be suitable for MOOCs, the present legal framework probably need to be changed from charging per download to a fixed fee per course, in order to make the costs predictable.

1.3 Public licences

Despite both user payment and extended collective licensing being possible solutions when it comes to handling resources associated with MOOCs, the by far most widespread approach to rights management of MOOC course materials in a MOOC to make use of a “public licence” that allows free of charge use.

Rights management through a public licence entails that the rights holder makes the licenced material publicly available, along with a licence indicating the terms of use. The purpose of this licence is partially to ensure that the use is lawful, i.e. with a basis in the Copyright Act, and partially to publicly clarify the terms of lawful use. Unlike the copyright handling models discussed in the two previous paragraphs, it is not common in public licences to link payment terms to lawful use, nether user payment nor extended collective payment.

A public licence is not an exemption from the Copyright Act. On the contrary, a public licence is founded in the autonomy the Copyright Act grants the author as regards how the works are made available to the general public. By using a public licence, the rights holder chooses to make the work available to everyone. It follows from this that only the rights holder can choose a public licence for the work.

2 Scientific production and open access

In recent years, Open Access has become increasingly common in connection with making scientific production available. This was initiated in particular by university libraries, which believe the costs of subscribing to and handling scientific publications on paper have become disproportionately high.

The term Open Access entails that peer-reviewed scientific articles will be made available for free via the Internet, in return for the publishers making them available being compensated for the loss of potential subscription income.

Furthermore, there are currently two variants of open access:

- *OA journals* (“Gold” OA) are when the material is freely available from the moment it is published for the first time in an (electronic) scientific publication.
- *OA repositories* (“Green” OA) are when material is supplied to, or made freely (free of charge) available in archives (these are usually institution archives) immediately, or shortly after publication in a (closed) scientific publication.

As regards “Gold” OA, the publisher’s business model is often some type of author charge, for example in the form of an APC (Article Processing Charge), where the author pays for peer review and the editorial staff’s work. Work is under way to establish grant schemes that cover APC in connection with introducing this model. In other words, academic authors will not have to pay a potential APC themselves, but the funds released because the libraries no longer pay for subscriptions will be reallocated to cover the APC.

An author charge is not required for “green” OA. These archives are operated by the academic institutions. In Norway, CRISTin (administratively under the auspices of the University of Oslo) is responsible for ensuring that such an archive exists.

In addition, to “Gold” and “Green” OA, there is also a distinction between “Gratis” and “Libre” OA.

As regards traditional publishing of academic articles, there is both a price barrier (subscriptions cost money) and an authorisation barrier (generative reproduction is limited to the right of quotation; indexing and searching is not permitted in accordance with the Copyright Act). The OA community uses the following definitions as a basis:

- “Gratis” OA removes the price barrier.
- “Libre” OA removes the authorisation barrier.

“Gratis” OA is naturally important in order to ensure the broadest possible impact for scientific material. This is perhaps particularly relevant in poor countries, where “gratis” OA gives academics access to literature which the libraries previously could not afford to subscribe to.

However, “libre” OA allows for using the resources in ways which the traditional copyright mindset does not authorise, by using the text as raw material for derived works where the text is updated,

further developed, adapted, derived, remixed and in other ways adapted to usage situations and target groups.

In order for MOOCs to be able to use material freely available under OA in the most flexible manner possible, it is desirable for OA to take place under terms that are not only “gratis”, but also “libre”.

3 Licensing course materials in Norway and the need for coordination

As follows from section 1.1 (“User payment adapted to the Internet”), it is technically feasible to handle copyright in a manner where the user pays for access in ways similar to those in use by the entertainment industry.

However, I do not believe this is a desirable solution for MOOCs. Firstly, a paywall between course materials and the students will be a barrier for what I consider one of the most important qualities of MOOCs, which is making knowledge and education as accessible as possible to the general public. Secondly, this approach to handling copyright is unnecessarily complicated and costly, and also depends on technical platforms that often restrict distribution to a few closed playback platforms.

Excluding the option to put the material behind a paywall, there are two possibilities for handling course material copyright for MOOCs: Extended collective licensing and public licences. These are mutually exclusive, since they both licence the same basic rights (reproductions, etc.).

Extended collective licensing has a long tradition within the education sector in Norway. Through Kopinor, there even exists an established institution for collecting information on use and for distribution of remuneration. The channels and methods of Kopinor *could* be adapted to MOOCs.

However, there is one consideration that makes extended collective licensing the less desirable option: Extended collective licensing does not have the “libre” characteristic (cf. section 2). Extended collective licensing therefore does not allow generative reuse of learning resources.

If you want to facilitate generative reuse of learning resources, you need to make the resources available under a “libre” licence. In practice, this means there are only two relevant licences from the Creative Commons organisation:

- CC Attribution.
- CC Attribution-ShareAlike.

It must be noted that the Creative Commons organisation has developed many different public licences adapted to various purposes; six in total. The two mentioned above, however, are the only ones approved for “free culture” by the Creative Commons organisation (the other four have not been given such approval). Both the licences mentioned thus allow both adaptations and commercial exploitation.

“CC Attribution” is also downstream-compatible with “CC Attribution-ShareAlike” (licence compatibility discussed below), but not vice versa.

The biggest difference between them is that the former does not require potential adaptations to be made available under an identical Creative Commons licence, while the other assumes that all adaptations are subject to the same Creative Commons licence.

When the Creative Commons organisation uses a term like “free culture”, they do not mean “free of charge” culture. “Free” refers to “freedom”, and in particular the freedom these licences give to users of the resources, as they can be updated, developed, adapted, derived, remixed and in other ways adapted to various usage situations and target groups. Because the word “free” in English is ambiguous, the French word “libre” has been adopted to distinguish between “freedom” and “free of charge”.

I believe that this freedom aspect is very important in connection with MOOCs. The framework and incentive schemes for publishing course materials for MOOCs should *ensure* that both these freedoms are safeguarded. For instance, when projects to create such courseware materials are funded, the funds should be tied to the requirement that the result is made available to the general public under a licence approved for “free culture”.

If you are concerned with this freedom, two more considerations must be emphasised:

- Keeping free culture free.
- Being able to remix resources with other resources without restriction.

As mentioned, there is a licence element within the Creative Commons licence framework called “ShareAlike”, which assumes that all adaptations (regardless of the number of steps) are subject to the same Creative Commons licence. In practice, this element entails that all adaptations to the resource must also be equipped with the same Creative Commons licence, and can thus in turn become subject to further development and adaptation, regardless of how many times the resource has been adapted. This licence element is thus a legal instrument which ensures that everything that has been made freely available, will remain free, even in adapted versions. If this element is missing, it is possible for an adapter to allow an adaptation to become “unfree” by making an adaptation and equipping it with a copyright notice which instead reads: “All rights reserved”.

Furthermore, it is important to note a practical coordination problem when remixing free resources: Licence incompatibility. It is easiest to explain this problem with an actual example. In its original web edition, Store Norske Leksikon (SNL) used a DIY licence where the intention was to make some material relatively openly available to the general public. Wikipedia also does this. However, because Wikipedia licenses its material under “CC Attribution-ShareAlike”, while SNL had another licence, it was impossible to make a remix using both material from SNL and Wikipedia. Both provided material under free licences, but the licences were nevertheless mutually exclusive because minor details in the licence terms deviated from each other.

This is fortunately no longer the case. The current edition of SNL uses “CC Attribution-ShareAlike” for all new material, and is thus compatible with Wikipedia and the other players that use this licence.

It would be very unfortunate if public funds were used in Norway to develop free course materials for MOOCs, and then to discover that they were in “licence silos” which made it impossible to use

them together with other free course materials because the different projects had chosen incompatible licences.

We also know that international MOOCs widely use either “CC Attribution” or “CC Attribution-ShareAlike”. In order to use such international course materials together with Norwegian materials, at least one of these licences should be used for Norwegian course materials for MOOCs.

I therefore propose that the MOOC Commission recommend that course materials for MOOCs be preferably licensed under “CC Attribution” or “CC Attribution-ShareAlike”.

4 Financing schemes

MOOCs are not free. Though it is assumed that elements such as pre-recorded digital media, self-evaluation, gamification and social platforms are used to a greater extent than in traditional courses to relieve staff functions and traditional adviser functions, MOOCs do require infrastructure in the form of computers, storage media, production equipment and software.

A business model has been found within OA where an Article Processing Charge (APC) replaces user fees when the material is made openly available on the internet. This business model is not feasible for MOOCs for the following reason: Having your paper published in a recognised peer-reviewed publication is very important for the career of an academic. This means that the publication is in the author’s self-interest, regardless of which way the money flows. There is currently no corresponding incentive associated with the development of course materials for MOOCs.

A business model has not yet been established for MOOCs. In addition to some education institutions’ experimentation with MOOCs within existing budgets, so far the authorities, private risk capital and philanthropic institutions have contributed experimental financing for various MOOC projects. A sustainable business model for MOOCs, however, has proved elusive.

For reasons given earlier in this note, I do not recommend student fees for simple access to the course materials, or extended collective licensing, attractive business models for MOOCs.

Possible financing schemes include:

- Public financing: MOOCs are financed over the national budget, in line with a lot of other public education.
- Student fees: The course materials are freely available and it is free to participate, but access to other services, such as debate forums and advisory groups, cost money, and/or you must pay a fee for the certificate of achievement/examination certificate.
- Premium licensing: Adapted versions of MOOCs that are available to the public for free can be purchased by companies and other institutions that want bespoke education.
- Sponsor financing: Sponsors pay to have their name or brand exposed in connection with a special MOOC.

- Personal data mining: In order to participate, students must consent to their personal data being collected (like Facebook and Google does to their users), and that this data can be sold to recruiting companies, marketing companies and others who are willing to pay.

The MOOC Commission discusses student fees in the interim report (Chapter 6.6), and concretely proposes allocating public funds “to develop important aspects of MOOCs” (Chapter 7 of the interim report).

These are the most probable financial schemes in Norway. However, it would hardly be realistic to charge student fees until Norwegian education institutions provide MOOCs of a recognised quality, and it is generally accepted that completing such a course will benefit the participant in the job market or otherwise. This means that, over the short term, public financing is necessary in order to develop this field in Norway.

I believe that premium licensing and sponsor licensing, in the best case scenario, will only provide the field with marginal income. There is no tradition for this in Norway, and I believe that Norwegian higher education institutions are not strong enough brands to attract major sponsor income.

Out of consideration to personal data protection, I cannot see personal data mining becoming a relevant financing method in Norway.

5 Open learning resources (OCW and OER)

The MOOC Commission’s interim report from December 2013 briefly discusses OpenCourseWare (OCW) and Open Educational Resources (OER).

The interim report e.g. states (p. 21) that “The rights to OER are regulated through open licensing, most commonly through Creative Commons, which makes this use free of charge”.

It must be noted that there is no direct connection between Creative Commons licensing and free of charge use. It is correct that resources licensed in this manner are usually free of charge, but this is not something that necessarily follows from the mentioned Creative licences. It follows from the resource being published openly on the internet, without including a system that charges for access. However, there are exemptions from this rule, for example by charging for printed editions even though the online version is free of charge, or charging for the collective works even when the material in the collective works is available with a Creative Commons licence.

OCW, OER, as well as open access scientific articles (OA), will presumably become important components in MOOCs. The reason for making such material available under a Creative Commons licence, is that it makes it much easier to link OCW, OER and OA-published articles from multiple sources (cf. Chapter “Financing schemes”).