

Evaluating the Understandings, Uses, and Management of Third-Party Content in OER¹

Findings from an Exploratory Survey of OER Practitioners

Creative Commons and Open.Michigan

I. Summary

In 2009, Creative Commons published a white paper, “Otherwise Open: Managing Incompatible Content within Open Educational Resources.” That paper explored problems associated with combining incompatibly licensed content, such as combining openly licensed materials with materials that are either not openly licensed at all or licensed under incompatible terms.² “Otherwise Open,” acknowledged that there is little empirical evidence measuring the extent to which those problems act as a barrier to the creation, dissemination and use of OER.

Following on the concepts presented in “Otherwise Open,” Creative Commons, in collaboration with Open.Michigan, a University of Michigan open scholarship initiative, (the “Survey Team”) sought (1) to discover whether OER practitioners regularly incorporate third-party content³ in OER, (2) to understand how OER practitioners manage copyright issues, and (3) to assess the impact of those copyright management techniques on licensing choices for the resulting material. The collaboration took the form of an exploratory survey of a small though relatively knowledgeable cross-section of English-speaking OER practitioners (“Respondents”).

Responses to the exploratory survey suggest that:

1. Respondents incorporate third-party content into their OER, and feel it is important to their ability to create high quality materials;
2. Respondents largely rely on exceptions or limitations to copyright law when incorporating third-party content into their OER;
3. Respondents confront copyright issues regularly in the process of creating OER, with approximately two-thirds of Respondents feeling “concerned” or “very concerned” about the copyright issues that come into play when using materials created by third parties; and
4. When Respondents incorporate third-party content, the resulting OER is sometimes licensed more restrictively than it might otherwise be in order to

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² That paper sets forth the problem in more detail, describing a number of copyright management techniques for reducing potential risk, including the reliance on jurisdictional copyright exceptions and limitations, and exploring the trade-offs involved in adopting any one of those approaches. “Otherwise Open” is available at: http://learn.creativecommons.org/wp-content/uploads/2009/09/Otherwise_Open_report.pdf.

³ For the purposes of this paper, the term “third-party content” refers to content created by someone other than the survey Respondent.

account for its inclusion.

Including third-party content in OER adds value to the resources, but also adds complexity to the process of developing and disseminating them. Accordingly, the Survey Team believes that further research on these issues would be useful. Additionally, an evaluation of the copyright management practices adopted by OER practitioners to cope with the issues, as well as the corresponding impact of these practices on downstream users of OER containing third-party content, could be of interest. Given the narrow scope of this exploratory survey, further research should engage with a broader cross-section of the OER community and be international in reach.

II. About the Exploratory Survey

The survey was intended as a preliminary exploration of the issues stemming from the inclusion of incompatibly licensed content in OER, and whether doing so poses any barriers to the creation, dissemination, and reuse of OER. The survey was made available online in the English language, and was open for response for approximately three weeks, from August 12, 2009 – August 31, 2009. The Survey Team sought to gather responses from a subset of individuals directly involved in the process of creating or facilitating the creation of OER (“OER practitioners”) and, specifically, those OER practitioners who indicated that they had some familiarity with copyright law and limitations and exceptions to copyright. This strategy was chosen both for expediency and because of the increased likelihood of encountering those who had experience with the issues to be explored. Given the targeted and self-selected Respondent pool, the results of the survey are not empirically rigorous and did not produce statistically reliable results. As such, this paper does not attempt to provide a complete picture of how the general population, or even the broader global OER community, manages third-party content or understands copyright law.

In order to reach the target population, the Survey Team primarily solicited responses at the sixth annual Open Education Conference in Vancouver, BC, Canada, during a panel on fair use and international copyright exceptions and limitations, as well as via word of mouth and conference back channels.⁴ The annual Open Education conference attracts a high density of OER practitioners from around the globe.⁵ The Survey Team also announced the survey on their respective blogs and Twitter feeds.

The survey employed the logic-step functionality of an online survey tool called Survey Monkey^{6,7} to ensure that Respondents were representative of the target community. All Respondents were first asked whether they played a role, directly or indirectly, in the creation of OER. Respondents who answered “no” exited the survey; the remaining Respondents moved on to the next section focusing on the following terms, respectively:

⁴ For more information about the Open Ed 2009 conference, see <http://openedconference.org/2009/>.

⁵ As stated above, the results of this survey should not be interpreted as being representative of the OER community as a whole.

⁶ www.surveymonkey.com

⁷ See Appendix B for a flow chart of survey questions, including the logic steps.

copyright, Creative Commons licenses, and copyright exceptions and limitations⁸ within their jurisdiction.

Each section began by asking the Respondent to indicate their familiarity with the term in question. If the Respondent was not familiar with the term, then that person was skipped to the next section. Respondents who were unfamiliar with all three terms exited the survey without answering any additional questions. If a Respondent reported being familiar with one or more of the terms, then that person was asked additional questions that were relevant to each familiar term. In this manner, the Survey Team was able to conduct some limited evaluation of the expertise of the Respondents with respect to copyright, Creative Commons licenses, and copyright exceptions and limitations.⁹

Survey questions were both quantitative and qualitative in nature. Quantitative questions consisted of multiple choice, rating scales, or matrix choice questions. The qualitative questions consisted of textboxes for free-form comments. All Respondents were asked to provide their country of residence. In addition, all Respondents had the option of providing their name, title, institution/organization, and email address, along with additional commentary at the end of the survey.

As a result of the logic functionality of the survey, and because a few Respondents voluntarily dropped out of the survey at various points prior to completion, the number of Respondents who answered any given question varies. Thus, in the Results section below, each question is reported in absolute numbers and percentages.

This paper does not discuss in detail the responses to every question asked. A copy of the questions asked in the survey is provided as Appendix A. A flowchart detailing the logic sequence of the questions presented, depending on how previous questions were answered, is provided as Appendix B. Additionally, the raw data from the survey (excluding personal information) is provided as Appendix C. All of these materials are made available under the terms of CC0.¹⁰

III. Findings from the Exploratory Survey

A. Information about the Respondents

A total of 94 people responded to the survey from 19 different countries. Nearly half of the Respondents were from North America – 9 from Canada and 36 from the United States. The remaining Respondents came from Australia, England, Scotland, Ireland, France, Estonia, Germany, Costa Rica, Brazil, Ghana, South Africa, United Arab

⁸ Because the copyright laws of different countries vary, the term “exceptions and limitations to copyright” is used as a general catch all for the category of laws including “fair use,” “fair dealing,” and the like. Throughout the survey this term was shorted to “limitations to copyright.” The terms are used interchangeably throughout this report.

⁹ Given the targeted nature of the survey, the Survey Team predicted that most Respondents would be familiar with all three terms, but wanted to allow for the possibility that the Respondent pool was different than expected.

¹⁰ See <http://creativecommons.org/publicdomain/zero/1.0/legalcode>.

Emirates, India, Pakistan, Japan, Korea, and Taiwan.¹¹

Of the 94 Respondents, 71 reported that they are in some way involved in the creation of open educational resources. An additional 9 Respondents reported that they were involved in “some other meaningful way” with the creation, production, facilitation, or distribution of educational resources. The 14 Respondents who did not identify with these roles were not asked any further questions.

The remaining Respondents then entered the body of the survey, starting with the question whether the term “copyright” had some meaning for them. Of the 76 Respondents who answered the question, 72 said “yes” and 4 said “no.” These 72 Respondents were asked additional questions about copyright generally, reported below. The next logic-step question asked whether the Respondent had heard of Creative Commons licenses. Of the 72 Respondents who answered this question, 71 said “yes” and 1 said “no.” The 71 Respondents who reported that they had heard of Creative Commons licenses were asked additional questions regarding the licenses, reported below. The final logic-step question asked whether the Respondent was aware of exceptions and limitations to copyright under their country’s law. Of the 70 Respondents who answered this question, 61 said “yes” and 9 said “no.” The 61 Respondents who answered “yes” were asked additional questions about copyright limitations, also reported below. Several Respondents exited the survey voluntarily along the way, as illustrated by the slight decline in the numbers of Respondents as the questions continued.

Respondents who reported they were aware of copyright were asked to rate how confident they would be if asked to define copyright. Of the 72 Respondents who answered this question, 31 reported that they were “confident” and 16 reported that they were “very confident” in their ability to define copyright, for a total of 65%. An additional 20 Respondents reported being “somewhat confident,” while 5 Respondents were either “not sure” or were “not confident” of their ability to define copyright.

As noted above, 71 Respondents had also heard of Creative Commons licenses prior to taking the survey. Of these, 27 Respondents reported being “confident” and 24 reported being “very confident” in their ability to describe CC licenses, a total of 71.8%. An additional 16 Respondents, or 22.5%, reported being “somewhat confident,” with 4 Respondents reporting that they were “not confident” or “not sure.”

B. Use of Third-Party Content

The survey asked how important use of third-party content (i.e., content not created or owned by the OER practitioner) is to the Respondent’s creation and publication of OER. Of the 57 Respondents who answered this question, 35 reported that using third-party content is either “important” or “very important.” The remaining 22 Respondents said it is “somewhat important.” Thus, 100% of the Respondents reported that use of third-party content is important to some degree to the open educational resources they create.

¹¹ As the survey was conducted only in English and online, these geographical statistics were expected – most of the Respondents hail from English-speaking countries.

Additionally, when asked why they feel that incorporating third-party content is important, 43 of 57 Respondents (75.4%) reported that doing so “results in a higher quality resource.” Some Respondents also felt that using third-party content renders the resource “more engaging” (30 of 57, or 52.6%). Finally, 26 of 57 (45.6%) Respondents believe that third-party content is required for the OER to “make sense.”¹²

The survey also asked how often Respondents attempt to use materials that are licensed under Creative Commons or other free/open licenses when creating OER. Of the 71 Respondents who answered this question, 51 (or 71.8%) reported that they “frequently” or “always” use CC licensed or openly licensed materials when creating OER, while 4 (or 5.6%) of Respondents said they “never” use such materials. Stated reasons for using CC or openly licensed materials only “sometimes” or “not at all” included lack of awareness (“[I] am only just finding out about creative commons and haven't really tried to use material with a cc license yet”) and lack of availability (“I can't find what I need quickly” and “they can be hard to source.”). Furthermore, 42 out of 57 (73.7%) Respondents indicated that they use both CC licensed materials and materials to which all copyright is reserved (“all-rights-reserved”) on the basis of an exception or limitation to copyright when creating and publishing educational resources.

C. Copyright Concerns and Management Techniques

The survey asked how often Respondents confront copyright issues when producing or publishing educational resources. Of the 72 Respondents who answered this question, 42 (or 58.4%) reported that they deal “frequently” or “very frequently” with copyright issues when producing/assembling OER, while 4 (or 5.6%) reported that they “never” deal with copyright issues.¹³

Respondents were also asked to rank their level of concern regarding particular activities. Sixty-four Respondents responded to this question. In order of importance, Respondents were “concerned” or “very concerned” about: (1) discovery of materials that can be legally used in OER (47 Respondents, or 73.5%), (2) publishing resources incorporating unlicensed third-party content (43 Respondents, or 67.2%), and (3) remixing different resources legally (41 Respondents, or 62.3%).¹⁴

Of the many copyright management strategies that might be employed when preparing and disseminating OER, those employed by the fewest number of Respondents are to “never include third-party content” (4 out of 57 Respondents, or 7%) and to “include

¹² In a free-form comment box, one Respondent stated that using third-party content is preferable to “reinventing the wheel,” and saves valuable time better used for teaching. Another Respondent reported that using third-party content “locates my original work in a broader context.” A different Respondent summed up the issue by stating: “We can't create everything ourselves. In our course development we do use copyrighted third party content with permissions, but only when no other options for the needed content are available. Using copyrighted content becomes a problem when we try to make the content available as open resources. Using third party open content is preferable.”

¹³ The survey did not define the term “deal with” as related to copyright issues, so Respondents could have interpreted this question in a variety of ways.

¹⁴ The survey did not expressly define the term “concern.”

third-party content whenever needed regardless of copyright status” (7 Respondents, or 12%). Survey Respondents used all of the remaining copyright management strategies between 49-58% of the time.¹⁵

D. Impact on Licensing Practices

The survey asked whether the inclusion of third-party content, i.e., any content not created by the Respondent, in a resource ever results in the Respondent applying a more restrictive license for the resource as a whole. 37 out of 57 (65%) Respondents reported that the inclusion of third-party content “sometimes,” “frequently,” or “always” results in a more restrictive license than they would have otherwise chosen for their materials.

E. Reliance on Copyright Exceptions and Limitations

32 out of 61 (52.5%) Respondents reported that they “sometimes” incorporate or repurpose materials under an exception or limitation to copyright. Another 20 Respondents (32.8%) reported that they “frequently” or “very frequently” do so. 9 (15%) Respondents said they “never” incorporate or repurpose materials under an exception or limitation to copyright.

When asked to describe situations in which they relied on an exception or limitation to copyright, 48 Respondents provided at least one answer. 13 Respondents reported using third-party content on the basis of an exception or limitation in the context of direct, face-to-face teaching, for example: “I frequently need images to illustrate classroom material,” “selecting/preparing course materials for classroom teaching,” “classroom teaching,” “Fair use in using images for incorporation in direct-teaching materials,” “Limited use of copyrighted materials in slides that will be presented to a class,” and “making photocopies of materials for students to use in their study.”

4 Respondents specifically mentioned relying on an exception or limitation in an online educational context: “Preparing lesson plans for audio online seminars,” “In the development of courses that are used in password protected teaching and learning environments restricted to ... faculty and students,” “Fair Use: Using remixed images of current events in posts or educational talks that are often recorded or archived,” and “making material available on online learning environment.”

¹⁵ The survey listed 10 copyright management techniques, and included an open text box for “other” techniques. The listed techniques, in no particular order are as follows: (1) include license status and attribution on third-party content; (2) create replacement content and license it under a Creative Commons or other free/open license; (3) attempt to identify the copyright holder and get permission to license the third-party content under a Creative Commons or other free/open license; (4) delete some third-party content; (5) remove, annotate, or provide a link to the original third-party content; (6) decide that some or all of the third-party content are not actually copyrightable in your legal jurisdiction and include them in the published resource; (7) decide that the inclusion of the third-party content in your legal jurisdiction is acceptable according to a limitation on copyright; (8) include the desired third-party content wherever needed, regardless of license or copyright status; (9) never include third-party content; and (10) replace third-party content with Creative Commons or other openly licensed content.

V. Discussion

A. Respondents use content created by others in the production of OER.

Only a small number of Respondents reported that they “never include third-party content” in their OER, while three-quarters of Respondents reported that in creating and publishing OER, they use CC licensed materials as well as restricted third-party materials on the basis of one or more exceptions to copyright. The tendency to use third-party content in creating OER was further seen in the high number of Respondents who stated that the ability to use material created by a third party was important to their ability to create and publish OER. All of the Respondents who answered that question felt the use of third-party content was important to some degree in the creation of OER. The survey also found that, as among the Respondents, they believe that using content created by third-parties improves upon the material they create themselves, or that it reduces the burden of having to create entirely new original resources.

It should be noted that when asking about the importance of using third-party content, the survey did not distinguish between third-party content that was offered under an open license as opposed to all-rights-reserved copyright. Accordingly, the responses to this question are indicative only of the practice of using content created by someone other than the Respondent.

B. Respondents have concerns about copyright.

The survey Respondents were mostly aware of copyright, Creative Commons licenses, and copyright exceptions and limitations, as intended. Approximately two-thirds of Respondents reported feeling “concerned” or “very concerned” around copyright issues that come into play when using materials created by third parties, particularly when publishing resources incorporating all-rights-reserved third-party content, and when combining resources with varied license terms.

The Respondents indicated that they often find themselves reusing other people’s content, and for them, OER production is a process of both original creation and reuse of existing third-party content. It is likely, given these results, that some of the OER being released are a mixture of newly created materials, other open resources, and some all-rights-reserved content.

C. Respondents license their work more restrictively when using third-party content.

Respondents reported that inclusion of third-party content sometimes results in more restrictively licensed resources. As noted above, the survey did not distinguish between third-party content that was offered under an open license as opposed to all-rights-reserved copyright when asked about this issue. The survey did not further explore the reasons behind this result.¹⁶

¹⁶ It is possible that choosing a more restrictive license is the result of constraints in certain open licenses.

It appears that at least some OER practitioners, the Respondents, are releasing their resources in a “less open” manner than they otherwise would. The reasons for this choice and the implications of this issue for downstream users of those OER were not studied.

VI. Next Steps and Suggestions for Designing Follow-On Research

This survey was intended solely as a preliminary exploration of the issues presented. The results suggest that the use of third-party content in OER is both important and desirable among the survey Respondents, but sometimes results in OER being licensed more restrictively than may otherwise be desired. Additional research may be desirable to determine whether the findings of this survey apply to a broader cross-section of OER practitioners and users. Further research may lead to understanding the issues in more detail and allow researchers to test these initial findings against the practices and experiences of other OER practitioners and users. Subsequent research and study should delve more deeply into the reasons behind the behaviors identified by this survey. Finally, the Survey Team suggests that any further research or study be internationalized through translation in order to capture more representative data from OER practitioners and users around the world.

The following observations are offered based on the experience of the Survey Team with the exploratory survey:

Clarify “third-party” content: The exploratory survey did not distinguish between third-party content that is all-rights-reserved versus content provided under an open license. Future research could explore the copyright status of third-party content that OER practitioners use in the creation of OER.

Ask follow-up questions: The exploratory survey did not uncover the reasons and rational behind certain practices, such as why particular copyright management techniques were used, and why OER creators chose more restrictive licenses when incorporating third-party content. Explanations may inform future research.

Explore user perspectives on mixed-license OER: The exploratory survey found that some amounts of mixed-license OER (i.e., OER containing materials licensed under different terms and conditions) are published. It would be useful to develop metrics to explore the impact(s), if any, that varied copyright license terms have on downstream users’ willingness and ability to access and reuse such resources.

Find out whether copyright laws are meeting the needs of OER practitioners and users: A future survey could relate the copyright exceptions and limitations available in a

For example, if an OER practitioner includes content that is provided under a Creative Commons Attribution-NonCommercial-ShareAlike license, then the resulting OER may need to be licensed under those terms even if the creator of the OER would prefer to use a less restrictive license, in order to comply with the terms of the license covering the third-party content. It may also be the case that choosing a more restrictive license is the result of the incorporation of all-rights-reserved content. Again, the survey did not explore the reasons for that decision.

particular jurisdiction to specific educational uses, such as OER creation, dissemination and reuse, of works believed to fall within those exceptions and limitations.