

MEMO

Topic	Q&A about copyright law in teaching
Date	2018-10-29
To	Constructor University Faculty

The following information was gathered for and during two Q&A sessions on October 22. and 23., 2018. It is intended to clarify details about the MEMO "Information about copyright law in teaching" as of 2018-07-03.

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Situation in General

What exactly is the current situation and why is this so complicated? [fake question]

After a recent change to Germany's copyright law, new privileges were introduced for teaching and research. While unlicensed use of copyrighted material is allowed within certain restrictions, this use must be remunerated. The required remuneration contracts and processes however are not yet established, but time and teaching and research goes on. The legal consensus is that the missing remuneration process does not prevent privileged use of copyrighted material for teaching and research; however, provisions must be taken for retroactive remuneration when the contracts finally will come into place. Therefore, instructors are required to be aware, which material they use, and records must be kept to be used for remuneration in the future.

What is UrhG and why it affects me?

The "Gesetz über Urheberrecht und verwandte Schutzrechte", abbreviated UrhG, §1 says: „Die Urheber von Werken der Literatur, Wissenschaft und Kunst genießen für ihre Werke Schutz nach Maßgabe dieses Gesetzes.“, translated "creators of works of literature, science, and arts enjoy protection for their works based on this law". Written material used in teaching is such kind of work. The UrhG is a German federal law, therefore it affects everyone in Germany creating or using material used in teaching.

How likely is that somebody would really start complaining about slides in a university – i.e. do we really need to analyse every single slide or is it just a general info to know, but we should not be obsessed by?

Recently, state universities ordered to delete all downloadable material from their online course systems to be safe regarding changes to Urheberrecht and remuneration practices. Given the high academic and political tension in Germany, we should be very aware. Reviews are deemed very likely. Also, it's the law.

Who has the liability in case of problems? The university, the instructor, or both?

The university is the acting legal entity and will be made liable and incur the legal and business consequences. However, real people representing the university will have done the action, and the university can make a civil case against its representative for damage compensation and there can be consequences regarding employment.

What are the consequences for not adhering to the UrhG?

CU will be sued, will have to compensate for calculated losses, and incur financial and ethical repercussions, leading to lower student numbers and third party funding reduction. CU might follow up with legal consequences against individuals responsible for these repercussions.

Teaching-specific Questions

What is an efficient way to deal with this UrhG? Can we get some tips and tricks Dos?

- Check the license of the material you are using.
- Use material CU has a license for or material under Open Access or Creative Commons licenses – these do not require remuneration but have their own restrictions.
- Use links to the material.
- If the material is not licensed, and not allowed to be used outside of an educational context, use it in the bounds of the UrhG, and provide records for later remuneration.
- Know the law.

... and Don'ts?

- Don't provide copies.
- Don't use copies you don't have a license to use for – if you do, provide records.
- Don't break the law.

Would the same apply if I put my slides on google drive for example?

The law is written for the use case "*making available* unlicensed material". *How* you make them available is not specified or limited. GoogleDrive, Onedrive, Dropbox, Box.net, thumbdrive, portable hard disk, web server, ftp server, file share, ... this is all not relevant.

Who can complain? Can a frustrated student complain for example, just to get some revenge?

Everyone can raise awareness with the relevant parties. The remuneration companies can ask for the records.

What happens if I take material from freely available on-line slides of other courses in other universities?

“freely available” is not precise enough for a final answer. You need to check the license the material is made public under, if it allows reproduction and redistribution, and under which conditions. Open Access and Creative Commons licenses usually allow this.

If the material is on-line [...] for a temporary time and then is not on-line any more when the course ends, is it ok or could that represent a problem?

The law is written for the use case “*making available* unlicensed material”, not specifying a timeframe. If you redistribute, it’s under the provisions of the law. Even if only “temporary”, whatever that means in the age of the Internet Archive and “unlimited” hard disks...

Constructor-specific Provisions

Is the process described in the MEMO required for all material used in teaching? [fake question]

The process given in the MEMO relates only to material used in *teaching*, and only *text-based* material. A “page” is text-based, if *more than* half of the used page is written content. Graphical representations are currently not covered by the provisions given.

What exactly do I have to do? What are the clear instructions for the instructors?

Read the MEMO and follow the regulations. See the Do’s and Don’t above.

What do I do if I am using several chapters from a textbook (more than the percentage that I can upload within the limits of the law)? Do I get it right that in this case students have to get the book?

Yes. You can also have the library put copies on reserve, see <http://pages.constructor.university/library/recommend/>

Can they make their own copies of chapters from any hard copies available in the IRC?

For personal use, yes. They need to use the copy machines in the IRC to ensure proper remuneration.

What should instructors do in the case that CU does not officially have access to a book or article that is essential for instruction?

Not pre-empting the next question, but you could acquire the book or article by interlibrary loan (ILL), see <https://pages.constructor.university/library/interlibrary-loan-ill/>

Note that receiving material by ILL does not come with a license to redistribute. Either everyone else having to read that material has to have it sent by ILL, too, or you need to follow the process as given in the MEMO.

Will the IRC procure access to the materials for the instructors?

You can recommend purchase of books for the stacks collection to the IRC. The books will be put on course reserves, if registered within CampusNet, see <http://pages.constructor.university/library/recommend/>

In the above case, how far in advance do instructors need to notify the IRC of the materials needed?

“To allow enough time for materials to be available by the beginning of the semester, please enter the information for your courses into CampusNet as early as possible (May 31 for the fall semester; November 30 for the spring semester).” -- <https://pages.constructor.university/library/recommend/>

During a mobility meeting, we were told that if we use any materials for the slides, we need to register that in a separate file. What is the file format?

See the end of the MEMO. A template file is available for download at <https://pages.constructor.university/library/writing/>

Who is the owner of the process?

The Head of IRC.

If we just provide students with internet links to course materials that CU has access to, do the students need to be logged into the CU WLAN? Or does Eduroam also work?

The “CU” Wi-Fi was never intended to be used by members of CU, and it’s use by

CU members is deprecated. Every member of CU should use “eduroam”.

Content providers will check membership by either testing the network (IP) address the intended access is made from, or by redirecting to Shibboleth. If the provider checks by network address, it does not matter, by which way the student is connected to our network – cable-based LAN or eduroam Wi-Fi (or CU Wi-Fi for that matter) on campus, VPN from anywhere are access methods into our network, and from the provider’s perspective, the request is coming from CU. If instead the network provider checks via Shibboleth, network access is irrelevant, as membership to CU is proven by logging into our systems.

For one of my courses, I developed the slides mainly based on three books. I reused some texts and images from the books in my slides and always wrote the source credits. I never distribute the copies of those books to the participants. In this case, am I doing it right? Do I have to fill out the “VG Wort” table and send it to the VGWortMeldung@constructor.university?

Images are currently not covered by the MEMO. If a page of a book or article is reproduced, the text needs to be recorded and remunerated; if the slide does not contain a whole page of text, but only a small excerpt, this is covered by the “Zitatrecht” (cf. §51 UrhG), and no record of use in the remuneration table is required.

How are our lecture slides (that we post to CampusNet) affected by the UrhG? Do we have to remove all graphics/images that CU does not have access to? Or does it suffice to provide citations?

We can currently make no final statement on the use of graphical material.

Regarding remuneration of *text-based* material, the content on a slide will hardly be seen as a reproduction of a page of an article, but rather as a quote, so it does not need to be recorded. However, the whole article or book must not be reproduced as a slide show.

My student finds an article, writes a paper, and sends article and paper to the instructor/TA. Can the instructor/TA send around the paper and article to the rest of the class for peer review/as an example/another reason?

There are two “works” referenced in this question, and both need to be discussed separately.

The student can send their own work, the paper, to whomever they like, as they are the creator of the work and have all rights to it (if not sold to a third party). If the instructor/TA can send that paper to the rest of the class depends on the license the student transfers to the instructor/TA, thereby to the university. This intended handling of student papers should be made clear to students before they hand in their papers, so that no misunderstanding occurs.

If the student can send the article to the instructor/TA, depends on the license the article was released under when and where the student acquired it. If the instructor/TA can send the article to the other students of the class, again, depends on the license the article was released under when the student acquired it. With Open Access or Creative Commons licenses, this would normally not be an issue. If the article was made public under a more restrictive license, sending it to the class would constitute reproducing the article and making it publicly available, and the MEMO applies: if CU has the license to the article as an e-product, the link can be send around, but not the article; if CU does not have the license to reproduce the article, then the use needs to get recorded and remunerated as stated in the MEMO.

Appendix: Flow Chart

Decision and action process for reproducing and/or distributing text-based electronic resources for teaching at CU Bremen

