

Lindsey Gumb

An open impediment

Navigating copyright and OER publishing in the academic library

Academic libraries around the world are leading the way to support the adoption, revision, and creation of open educational resources (OER), both saving students money and encouraging pedagogical innovation in the classroom. While there are varying definitions depending on the organization, it is generally accepted that a resource used for teaching, learning, or research can be considered an OER if it is both free and openly-licensed under Creative Commons (CC), general public license, or is in the public domain.¹

In the United States, if your library isn't already knee-deep in this process, odds are the conversation has at least begun, considering that 23 states have passed some form of textbook affordability legislation,² and the federal government has included \$5 million in its budget for the second year in a row to support such initiatives through grant funding.³ Library leadership within the open education landscape aligns not only with our professional values to provide users with equitable access to information but also ALA's motto to provide the "best reading, for the largest number, at the lowest cost."

Even ACRL's "2018 Top Trends in Academic Libraries" acknowledges that OER production through a vehicle like a university press is an opportunity to showcase the scholarship and research happening on our campuses.⁴

Most academic librarians are accustomed to assisting faculty with locating and acquiring quality, copyrighted learning resources

to support the curriculum. Therefore, slightly realigning this process in order to point these individuals toward quality, openly licensed content hasn't required a significant learning curve beyond identifying appropriate open repositories for consultation. What happens, however, when these same faculty want to go beyond simply identifying and adopting OER content and ask for help in revising, remixing, and creating new content? In theory, the concept seems simple enough, but are we really as well-equipped as we should be to lead faculty across this bumpy new terrain of content revision and creation in respect to the nuances of copyright, fair use, and open licensing?

Due to the inherent "open" nature and intent of OER, it becomes especially vital for those of us assisting faculty with these initiatives to have a solid foundation and confidence in navigating the rules and regulations pertaining to intellectual property. If a faculty member approached you and said she was working on revising an OER and needed some help determining whether the inclusion of a copyrighted work would qualify as fair use, how comfortable would you be working through this process? I'd be willing to bet many of us would be hesitant, considering that it has been fairly well-documented that

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library schools historically have not provided adequate course offerings for their students on the topic of copyright in librarianship.

In 2015, LeEtta Schmidt and Michael English published a study that analyzed 51 ALA-accredited Master's Programs in Library and Information Studies in the United States and found that while 11 of them offered an elective dedicated to copyright, none had a required course for it.⁵ The same study found that 80% of both academic and public librarians at top-ranked institutions received no copyright/IP-specific, on-the-job training.

Even without any formal copyright training it was also found that librarians still felt obligated to provide answers and guidance to patrons regardless of their confidence in the subject matter.⁶ This sense of obligation we feel may stem from the pressure that library deans and directors sometimes place on their staff to provide the level of copyright support that ALA encourages in Article IV. A 2013 study revealed that library administrators often rely on staff to “deal” with copyright issues, even though nearly 90% of those surveyed felt that copyright law training in MLS or MLIS programs was in fact inadequate.⁷

CC licenses, which rely on the existence of copyright to function and are applied extensively to content published as OER, are now an equally important component of copyright foundational knowledge for academic librarianship. However, a 2017 study conducted by Juan-Carlos Fernández-Molina, João Batista E. Moraes, and José Augusto C. Guimarães indicated that 71.01% of respondents did not know how to publish a document with a CC license.⁸

The responsible curation of OER depend significantly on librarians having the skills to not only publish a resource with a CC license, but more importantly, the ability to interpret and explain the responsibilities and ramifications of each license option. This is especially true when ingesting CC-licensed content for revision or inclusion in the creation of OER, as well as during the publication process. How can librarians successfully and *responsibly* participate in and

lead a campus initiative like open education when the majority of librarians are lacking essential, foundational skills—albeit, by no fault of their own?

Consider this: a faculty member wishes to revise an existing open textbook so that it better aligns with course learning outcomes and student learning styles. Revising any open content would mean *at minimum* the librarian assisting would need to be able to identify, interpret, and explain the open license embedded within the original work so that the faculty member thoroughly understands the responsibilities and limitations that may exist when making any changes. This task, however, often extends beyond simply identifying the content's overall license, because many works, while in fact openly licensed as a whole, contain copyrighted, third-party content that was included by obtaining explicit permission from the copyright holder. If a faculty member fails to secure the necessary permissions to re-license the third-party content in the new adaptation, they could be putting not only themselves or their institution (depending on any existing institutional copyright policies) at risk for a lawsuit, but also any future users who adopt the new work.⁹

Because of the lack of copyright preparation in LIS programs and the fact that content creation and revision is still a relatively new area of OER leadership, many librarians are simply unaware of the extent in which collaborating with faculty to revise or create their own open content will require a deeper knowledge and grasp of copyright, fair use, and licensing structures to responsibly produce a product worthy of being shared beyond the instructor's own classroom. While scholarly communication librarians also do not typically receive formal training via LIS programs, they at least have the benefit of working with these issues on a near-daily basis and may have an easier time justifying both reimbursement and time off for professional development (like copyright boot camps) because of their job descriptions.

What about the early-career professionals or those whom have had OER responsibilities suddenly dropped into their laps due to an administrative ask? Or the libraries that operate with small staffs lacking the time or access to funds necessary to seek additional professional development? How can we expect our OER programs to be sustainable if the projects we undertake require a more substantial understanding of the law and our librarians are not receiving the foundational education they need to do so? While I don't think LIS programs should be let off the hook entirely, I do think there are some things academic libraries can do immediately to place themselves in a better position to build sustainable OER programs, in terms of copyright:

- Establish a relationship with your Office of General Counsel, making this entity aware of the nature of OER creation and revision will be important if you need help navigating situations beyond your capacity.

- Raise awareness of the type of professional development that all librarians and staff involved in your OER program should have access to in order to navigate copyright roadblocks, and then make a case to secure appropriate funding to do so.

- If funds are tight, collaborate with a consortium or professional organization to set up an in-person copyright boot camp with reputable professionals. If your library is struggling with these problems, odds are others are, too.

- Subscribe to listservs that address OER and CC inquiries and use them as a community of practice. SPARC Libraries and OER Forum and CC-openedu are very active.¹⁰

With the open movement charging ahead, librarians are potentially entering uncharted territory in terms of what it means to provide copyright support in an academic library. The literature spanning the last 20 years clearly highlights the lack of copyright education provided in ALA-accredited LIS programs. While this is not a new problem, it is becoming increasingly more of a challenge as new trends

like OER continue to sweep through academic libraries. Will LIS programs work to develop *required* courses or even tracks to provide its students, our future colleagues, with the necessary foundational knowledge of the law to ethically support the open movement and future trends in higher education?

Equally important, will academic libraries be prepared to provide on-the-job training to librarians at all stages in their careers to support ever-evolving scholarly communication practices? Librarians will undoubtedly continue to help faculty with requests like identifying how much of a chapter they can copy and distribute to their students to have it qualify as fair use or whether the showing of a film will require the purchase of public performance rights. However, libraries acting as leaders of OER on their campuses can also expect requests to take the form of more in-depth assessments and analyses of fair use and licensing in the context of content revision and creation of OER. This new narrative of engagement comes with a great deal of responsibility that without certain foundational knowledge and experience can be risky, and dare I say unethical? As our involvement in the publishing of OER expands, our profession will need to prioritize the credentials and support necessary for librarians (beyond ad-hoc professional development opportunities) in order to create strong, sustainable OER programs and services.

Notes

1. "CC Wiki: What is OER?," Creative Commons, last modified February 8, 2016, 18:21, https://wiki.creativecommons.org/wiki/What_is_OER%3F.

2. "OER State Policy Tracker," SPARC, accessed January 14, 2019, <https://sparcopen.org/our-work/state-policy-tracking/>.

3. U.S. PIRGs, "Open Textbooks Pilot Renewed, Saving College Students up to \$50 Million," news release, September 26, 2018, <https://uspirg.org/news/uspirg/open-textbooks-pilot-renewed-saving-college-students-50-million>.

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vised model, Module 5, which addressed the Search as Strategic Exploration frame, came near the end of the course, long after students should have begun searching for sources for their Wikipedia project. As a result, students had to begin to find sources for their final project long before they were introduced to useful tools and effective strategies for performing searches in catalogs, databases, or the open web. Our restructuring of the course had inadvertently forced our students to “go it alone” in one of the most crucial steps for preparing for their final.

Conclusion

A credit-bearing course is a complex mechanism with learning outcomes, lectures, readings, activities, and assignments all playing roles as moving parts that, when moving in concert, provide both the instructor and the student with an enjoyable, if sometimes challenging, experience. However, as harmony between those parts can be difficult to achieve, re-

vising a course can be a daunting prospect.

In using the Framework for Information Literacy for Higher Education, we were able to build our course around its structure of general concepts and avoid some of the problems of discontinuity that had plagued us in the past. The Framework’s structure allowed us to logically organize the concepts covered in our course while providing us with the flexibility to change things as new problems arose.

In light of the problems we identified in our first round of course revision, we chose, in the following academic year (2018–19) to add in-class Wikipedia training sessions, change where the research as inquiry and search as strategic exploration modules appeared in the class and add several new lessons to address concerns such as fake news. The flexibility and breadth provided by the Framework made these later revisions far simpler and less disruptive than they would have been in the older system. ❧

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4. ACRL Research Planning and Review Committee, “2018 Top Trends in Academic Libraries: A Review of the Trends and Issues Affecting Academic Libraries in Higher Education,” *C&RL News* 79, no. 6 (2018): 286–300, doi:10.5860/crln.79.6.286.

5. LeEtta Schmidt and Michael English, “Copyright Instruction in LIS Programs: Report of a Survey of Standards in the U.S.A.,” *The Journal of Academic Librarianship* 41, no. 6 (2015): 736–43, doi:10.1016/j.acalib.2015.08.004.

6. Ibid.

7. John Eye, “Knowledge Level of Library Deans and Directors in Copyright Law,” *Journal of Librarianship and Scholarly Communication* 2, no. 1 (2013): 1–14, doi:10.7710/2162-3309.1103.

8. Juan-Carlos Fernández-Molina, João Batista E. Moraes, and José Augusto C. Guimarães, “Academic Libraries and Copyright: Do Librarians Really Have the Required Knowledge?” *College & Research Libraries* 78, no. 2 (2017): 241–59, doi:10.5860/crl.78.2.16584.

9. “CC Wiki: Marking/Creators/Marking Third Party Content,” Creative Commons, last modified November 19, 2003, 23:44, https://wiki.creativecommons.org/wiki/Marking/Creators/Marking_third_party_content#Additional_explanation_and_tips.

10. <https://sparcopen.org/our-work/sparc-library-oer-forum/>, <https://creativecommons.org/2017/09/05/invitation-join-cc-open-education-platform/>. ❧