Copyright Status in Moodle 2.0 Proposal
By Martin Brennan, Copyright and Licensing Librarian
In coordination with:
• Amy Blum, Senior Campus Counsel
• Sharon Farb, Associate University Librarian for Scholarly Communication and Collection Management
• Angela Riggio, Head, Scholarly Communication and Licensing

The UCLA Library in consultation with the Office of Campus Counsel is proposing the following change to be incorporated into CCLE as part of the Moodle 2.0 adoption.

Please see the screenshot below to see how Moodle 2.0 looks “out of the box” at the file upload point. It asks the instructor to “Choose License” from a dropdown menu.

This existing language seems to be designed for items for which the uploader (faculty, TA, ITC, etc.) owns the copyright and for which s/he is declaring whether any of those rights are voluntarily surrendered, either by declaring the item as in the public domain or under the terms of a specific Creative Commons license. It does not address the more common situation, when the uploader does not own the copyright.

Proposal
Change “Choose License” to “Copyright Status,” and revise the options in the dropdown menu to the following:
• I own the copyright.
• The UC Regents own the copyright.
• Item is licensed by the UCLA Library.
• Item is in the public domain.
• Item is available for this use via Creative Commons license.
• I have obtained written permission from the copyright holder.
• I am using this item under fair use.
• Upload by faculty designate; copyright status to be determined
CCLE developers have reported that this will be very simple to accomplish by just altering the wording of the question. No additional programming will be required. There would also need to be a link to a glossary to explain each of these options. This could be a “What is this?” hyperlink or a question mark link. A separate window would open containing the following:

This question requires you to declare the copyright status of the item you are uploading. Each option is explained in greater detail below.

**I own the copyright.**
You are an author of this work and have not transferred the rights to a publisher or any other person.

**UC Regents own the copyright.**
This item’s copyright is owned by the University of California Regents; most items created by UC staff fall into this category.

**Item is licensed by the UCLA Library.**
This item is made available in electronic form by the UCLA library. *Note: the UCLA Library would prefer that you provide a link to licensed electronic resources rather than uploading the file to your CCLE course.*

**Item is in the public domain.**
Generally, an item is in the public domain if one of the following applies:
- It was published in the U.S. before 1923.
- It is a product of the federal government.
- The term of copyright, which is generally the life of the author plus seventy years, has expired.

**Item is available for this use via Creative Commons license.**
Many items are made available through Creative Commons licenses, which specify how an item may be reused without asking the copyright holder for permission. Similar “open source” licenses would also fit under this category. For more information on Creative Commons licenses and how to locate items made available in this manner, go to [Creative Commons](#).

**I have obtained written permission from the copyright holder.**
This answer applies if you have contacted the copyright holder of the work and have written permission to use the work in this manner. *Note: You should keep this written permission on file.*

**I am using this item under fair use.**
Fair use is a right specifically permitting educational, research, and scholarly uses of copyrighted works. However, *not every educational use is automatically a fair use; a four-factor analysis must be applied to each item.* For more details go to the [UC copyright fair use page](#).

**Upload by faculty designate; copyright status to be determined**
Select only if this upload is being performed by someone besides the instructor of record at the instructor’s behest, but the instructor did not clarify the copyright status.

Note: if you believe *none* of these answers apply, you should not upload the item. If you have questions regarding the above or need assistance in determining copyright status, please email copyright@library.ucla.edu for a consultation. *It is the instructor of record’s responsibility to comply with copyright law in the handling of course materials;* see the [CCLE copyright information](#) page for more details.
Justification
We at UCLA are required by law and policy to be mindful of copyright status when using copyrighted work. Requiring an answer to this question will encourage compliance with copyright, spur consultation with the Copyright and Licensing Librarian when there is confusion, and help faculty recall their own earlier copyright determinations, which will be vital information when making decisions on content in future courses.

This information will also make it possible to better manage these collections and items for use in teaching and research. For example, if we know the copyrighted work is assigned a Creative Commons license allowing educational uses, faculty and their colleagues can use and reuse the item repeatedly. Moreover, it is important to dispel the notion that CCLE is an easy replacement for coursepacks, allowing the free distribution of copyrighted materials, when in fact there are limits to the use of copyrighted materials that should be better understood and respected.

Further, the Office of Campus Counsel is going to great lengths to protect faculty’s ability to employ fair use and other copyright exceptions to the greatest extent possible; this change would demonstrate proactive efforts to improve campus compliance with copyright, bolstering its ability to defend faculty if/when accusations of copyright infringement arise.

This proposal was reviewed by CCLE’s Standards and Practices Group on April 5th, and the Faculty Committee on Educational Technology on May 26th. Both groups endorsed the proposal. Moreover, FCET suggested ITPB might consider making this recommended procedure for all Course Management Systems, to the extent feasible.

Phased Rollout
To allow sufficient time for training and adoption of this new procedure, and to address the potential disruption to workflow such a question might create, we are proposing a phased rollout of this requirement. In all phases, the ability to upload items will not hinge on the answer to this question. Policy will remain that it is the instructor of record’s responsibility to comply with copyright law in the handling of course materials.

The final option (Upload by faculty designate; copyright status to be determined) was added to preempt potential delays in uploading course materials by Instructional Technology Coordinators (ITCs), Teaching Assistants (TAs), and the like. It is quite common for instructors to have such designates upload materials on their behalf. Many group members felt that requiring support staff to contact faculty for the answer to this question for each item would be a massive disruption during course builds.

To address this in the first phase of the rollout, CCLE developers (most likely through a CCLE innovation and development program grant) will create a simple way for instructors to assign copyright status to previously uploaded items. If a designate uploads the item and selects Upload by faculty designate; copyright status to be determined, the item will appear in the CCLE course as intended. Instructors with such materials in their courses will then receive a regular email, perhaps on a weekly basis, reminding them that they need to assign copyright statuses to these items. The email will provide a link to a simple online form containing all of the uploaded items and the copyright status of each. Faculty will be able to adjust and save the copyright status for each item; once they do, the emails will cease. This will minimize the impact of the change on workflow and give faculty some time to stop, think about the items’ copyright statuses, and make necessary adjustments.

The Copyright and Licensing Librarian has developed instructional materials on best practices for distributing copyrighted materials in course management systems that includes handouts, flowcharts, and
videos. These will be used during this first phase to help faculty understand the choices they will have to make and provide strategies to improve the arrangement of their materials, such as:

- Providing links to library materials is better practice than uploading PDFs
- Licensed or freely available materials can be identified that accomplish the same goals as items protected by copyright
- Items can be acquired/licensed by the library for repeated use

These instructional materials will supplement additional enhancements to the CCLE interface to allow for simpler linking to UCLA Library materials. The existing “UC Citation Linker” form will be integrated into the file upload interface to allow easy location of a stable URL for a Library item, and database searching capabilities can also be improved at this point of need. The interface will also prominently feature contact information for the Copyright and Licensing Librarian.

This first phase will be complete when the proportion of items with an undetermined copyright status goes down as instructors comply. At that point, we suggest that items **Uploaded by faculty designate** will be invisible to students until faculty assign copyright status. However, this function would only be employed when a substantial portion of faculty are complying as expected.

**Access and Use of Copyright Status Information**

CCLE, the UCLA Library, and the Office of Campus Counsel have some specific ideas for the employment of this information to further improve compliance:

- UC policy states that items used under the fair use doctrine should not be used repeatedly, term after term. After the rollout’s first phase is complete – that is, when a substantial number of faculty using CCLE are assigning copyright status to all items in their courses -- items uploaded under fair use could be removed in the backup-and-restore process to provide a systematic way to improve compliance. Faculty could still manually upload items more than once under fair use when they feel it is appropriate, but the system would prevent them from doing so automatically.

- Aggregate data on copyright status of items could be used by the Copyright and Licensing Librarian to identify training and resource needs.

- The Library could approach uploaders of large amounts of Library-licensed items to encourage and assist with greater use of links instead of PDFs, which the Library strongly prefers for licensing and collection management reasons.

- Upon faculty request the Copyright and Licensing Librarian could perform an audit of materials in a course to determine whether fair use is being employed appropriately and could advise how to make fair use determinations in the future.

We recognize that there may be policy issues regarding the handling of this information as proposed and will study what parameters may need to be set, at the request of ITPB. However, even if we do nothing with the information, it is still important from a compliance perspective alone to make the proposed revisions.