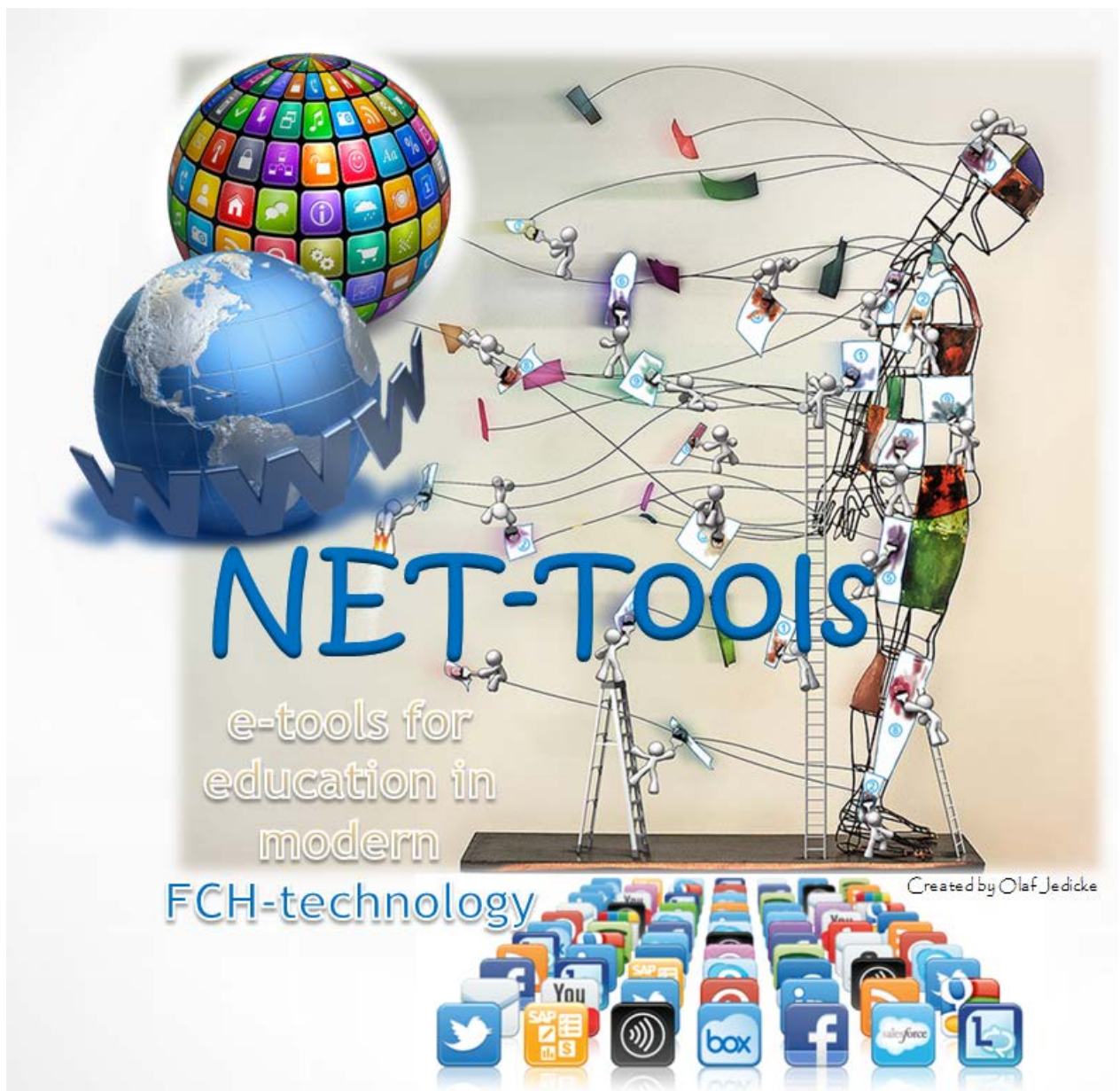


Novel Education and Training Tools based on digital applications related to hydrogen and fuel cell technologies

Deliverable 1.2



Grant agreement no. FCH – 2 JU – 736648

D1.2 Guidelines IPR and list of Helpdesks and available Information

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If deliverable does not get finished as scheduled in description of activity, please add a short explanatory statement. (To be done by responsible person of deliverable)

This deliverable was fixed in the Description of Action of the project within work package one. However, the content of the deliverable was not clearly expressed and led to some confusion because Intellectual and Property Rights (IPR) are of main importance to the NET-Tools project.

By discussion of the consortium it became illuminated, that the IPRs must get differentiated between project partners, partners from other projects like TeachHy and external participants, willing to provide their own e-Learning content via NET-Tools platform.

Due to that, the consortium decided at the 2nd progress meeting in Sofia, to submit this deliverable as prepared by University Perugia without further adding or modifications. The reason for this decision was that IPR concerning the consortium are formulated by rules within the consortium agreement. This concerns also the envisaged collaboration with TeachHy project, which is similar to NET-Tools regarding the e-Learning aspects. Also there the consortium agreement regulates the IPR of each participant and/or content provider to the e-Learning platform.

In this light, the deliverable must be recognized as a first advice to external participants (e-Learning content providers) to introduce them at first level to their IPR. The deliverable appears as such public deliverable and because of that will be available via project website, supported by official links to “further information on IPR” especially provided by European Commission.

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1 Introduction

Elearning professionals are increasingly creating educational materials that are offered on a wide scale, globally. With this dynamic frontier of content delivery, emerge questions and concerns about intellectual property rights among content developers and providers. Questions such as who owns the digital materials and content that I create and post online? What are institutional or organizational limits of ownership to my e-materials and digital products?, Can I patent my work and what are organizational implications? Do I have the right to use content for eLearning courses that is easily downloadable and found on the worldwide web at another organization? This guideline addresses intellectual property rights related to the field of e-learning and discusses its implications for e-learning practitioners from two points of views:

- protecting the authorships rights of the e-learning content developer;
- complying with the reuse of third party material by the e-learning content developer.

2 The Intellectual Property Rights in e-Learning

The management of intellectual property (IP) rights is critical for the successful implementation of e-learning, courses and materials. The effective application of intellectual property rights in the creation, development and implementation of e-learning courses is a critical component in the field of education, as it plays a relevant part in a knowledge-based economy. Intellectual property rights over the years adapted to educational, technical and commercial change. It is therefore vital that developers, practitioners, and consumers of e-learning content have a clear idea and understanding of what is allowed/not allowed with the product of their labors.

As a growing number of digitized and e-learning courses increase and are offered on a global scale, e-learning practitioners have expressed concerns about the legal issues concerning of their work and products. For e-learning practitioners for example, the legal lines of what is private content material and what is public content that can be transferrable from one organization or institution to another have become increasingly unclear and sometimes misunderstood. Questions of ownership of copyrighted or digitized products also abound as well as issues pertaining the legal download of copyrighted materials and resources, patents and trademarks.

The purpose of these guidelines is to promote awareness about basic intellectual property rights, especially as it relates e-learning content creation and development. It describes the relevant aspects of Intellectual Property (IP) Rights as it relates to the field of e-learning. It will provide guidelines and best practices about intellectual property rights in the development and creation of e-learning materials and on the use of third party materials.

2.1 Basic Concepts: Copyrights, Patents, Trademarks

2.1.1 Copyright in e-Learning.

The first basic concept to understand for e-learning content developer is that ***copyrights do not protect ideas, but copyright protects how ideas are expressed.***

Copyright protected works for eLearning practitioners includes: *literary, musical, and dramatic works, as well as photographs and graphics, audio and visual recordings, software, and other intellectual works.*

A copyright provides protection for original works of authorship, fixed in any tangible medium of expression. Copyright protection attaches automatically to original works of authorship fixed in a tangible medium of expression. Originality requires that the work was created independently (i.e. not copied from another) and that it embodies a minimum amount of creativity. To be fixed in a tangible medium of expression means that the work can be perceived either directly or by a machine or device such as a computer or projector.

Copyrightable works include the following categories:

- Literary works
- Musical works, including any accompanying words
- Dramatic works, including any accompanying music
- Pantomimes and choreographic works
- Pictorial, graphic, and sculptural works
- Motion pictures and other audiovisual works
- Sound recordings
- Architectural works

These categories should be viewed broadly. For example, "literary works" includes novels, poetry, compilations, and computer programs. "Pictorial, graphic, and sculptural works" includes images, photographs, paintings, maps, charts, and architectural plans.

The owner of a copyright has the exclusive right to control the reproduction, distribution, performance, and display of the work, and the preparation of derivative works. Original ownership of the copyright is granted to the author of the work. But if the author creates the work in the scope and course of employment, then the employer is considered to be the author under the "work for hire" doctrine. A party may also be considered the author of certain works, if the work is commissioned and the contract specifically states that the "work for hire" doctrine applies. ***Ownership of a copyright can be transferred.*** A transfer of the owner's exclusive rights must be made in writing. A transfer of less than the owner's exclusive rights does not need to be in writing.

2.1.2 Patents in e-Learning

Patents unlike copyright are unique inventions that are crucial to the success of many organizations, institutions or businesses. eLearning practitioners or content developers who have

developed new and better products or processes that are unique, useful, and non-obvious, need to protect the competitive advantage this gives them by obtaining a patent. The implications of obtaining a patent for a unique invention is that the holder of a patent can stop third parties from making, using or selling his or her invention for a period of years depending on the type of invention. Obtaining a patent for an invention as an eLearning practitioner requires a clear understanding of who owns the inventions. The most critical question is does your institution, organization or business own the inventions or do the employees who create the inventions own them? Legally, this may depend on principally on the type of work arrangement you have with your organization, institution or business. An agreement between you and your institution will specify and allocate ownership rights well ahead of your invention. Ensure that you pay attention to the “devil in the details.”. Summarizing, patents protect an invention from being made, sold or used by others for a certain period of time.

2.1.3 Trademarks in e-Learning

Trademark law seeks to protect others from using the same or a confusingly similar name for their products, as yours. Currently, a majority of eLearning content and materials are no doubt increasingly differentiated and varied and may include digital audio, video, text on a website, animated images, and virtual reality environments. The ability to create content in a variety of ways by utilizing a variety of authoring tools poses critical issues related with trade mark protection. Trademark protection under the law, protects the names and identifying marks of products and companies. The purpose of trademarks is to make it easy for clients and consumers to easily distinguish competitors from each other. A trademark protects the name of your product by preventing other business from selling a product under the same name. Having a unique and identifiable name for your product is an advantage for your institution organization and business.

2.1.4 No Copyrights Works

Certain types of works are not eligible for copyright protection. These include:

- Ideas, theories, concepts
- Procedures, methods, processes
- Titles, names, short phrases and slogans, familiar symbols or designs, variations of type styles, lists of ingredients
- Facts
- Works consisting entirely of information that is common property and containing no original authorship (e.g. standard calendars, height and weight charts, tables taken from public documents)
- These works are in the public domain, meaning they are freely available for use without copyright restrictions.

3 Copyright Ownership and Control of e-Learning Course Materials

In considering the question of copyright ownership of online educational materials, institutions must take into account not just legal standards under copyright law, but also academic tradition and practical considerations of policy administration. While most of the current debate focuses on the relative rights of faculty members and institutions, the rights and responsibilities of other creators, developers, and users must also be considered in university policies.

3.1 “Scholarly Works” and New Media

With the advent of digital technology and new forms of media, many new questions have arisen about the definition of “scholarly works”. Some policies reference traditional forms of works such as articles and textbooks. Depending on one’s field of study, however, a faculty member’s scholarly work might take the form of a multimedia production, CD-ROM, interactive textbook, web site, computer code, or software, among others. Some of these works might include inventive elements subject to patent protection as well as copyright ownership issues, further complicating their status under university policy. It has thus become increasingly important to coordinate the work of technology transfer offices and others who deal with patents with the work of individuals on campus who deal with works subject to copyright protection.

Web pages can present special challenges for universities, because they can take so many forms and include such a wide variety of information and expression from a multitude of creators and sources. Colleges and universities often provide the resources necessary to facilitate their development without controlling or monitoring their content. The resulting diversity in web pages associated with these institutions reflects the breadth of their missions and can be a good thing. Each institution will want to make sure, however, that its constituents (including faculty, staff, students, and organizations) understand when they are speaking on behalf of the institution or some component thereof, and when they are speaking as individual scholars or citizens.

Publicly accessible web pages, including those associated with courses that are not restricted to enrolled students; also pose special challenges with regard to *educational fair use* to the extent that they incorporate copyrighted materials from other sources. Many scholars want their work to be available and accessible to scholars at other institutions and to the public at large, not just to their immediate students. This desire may be consistent with the institution’s mission, but it also requires careful consideration of the copyright issues involved.

3.2 Faculty Rights

Faculty members have many of the same concerns with the copyright ownership of online educational materials as they do with traditional scholarly works, including:

- The *ability to create derivative or related works* (for example, faculty members may want to retain the right to publish articles on subjects covered in online educational materials and courses).
- *Professional recognition and credit both in and outside the institution* – including consideration of online works in promotion and tenure policies
- The *ability to edit and control the presentation* of their work, and to exercise a *right of first refusal* in the preparation of subsequent versions
- The *ability to change and update materials over time*, reflecting new research, evidence, or developments
- The *right to take educational materials they create when they leave* for another institution, for their own teaching and research purposes
- The *right to have a say in whether and how their works are commercialized*, and to share in the profits (if any) from such commercialization
- The *right to share their work with peers in their disciplines* (e.g., to check their work or to build upon it)

These interests should be taken into account when reviewing and revising policies on intellectual property and online education.

Faculty members should normally retain the right to update, edit or otherwise revise electronically developed course materials that become out of date, or, in certain circumstances, should place a time limit upon the use of electronically developed course materials that are particularly time sensitive, regardless of who owns copyright in the electronically developed course materials. These rights and limitations may be negotiated in advance of the creation of the electronically developed course materials and may be reduced to writing. Absent a written agreement, each faculty member will have the right and moral obligation to revise work on an annual basis in order to maintain academic standards.

4 Third Party Material and Fair Use of Material in Developing e-Learning Content

E-learning course development requires you to borrow artifacts and intellectual material from the Internet all the time. This includes linking to external resources. But, can you use them without attributing the original author or the materials you have borrowed?

A course is a series of statements that need to be valid, accurate and current. Simply developing a course using content from different resources is not enough. And if you do use multiple resources, you need to practice legal citing and attributing practices for all copyrighted works.

This includes images, graphics, content, audio and every imaginable multimedia that supports your course. As an eLearning developer, you need to know about the various copyright and public domain intellectual works available for your use in your courses.

These resources will not only save your time and money (you won't need to hire graphic artists to create images and photographs to support your eLearning content) you will also be able to earn trust and credibility as an e-learning developer. The key is to be able to integrate the relevant intellectual property in your e-learning course using appropriate citation and attribution methods.

4.1 Creative Common Resources

There are several intellectual property resources available in the Creative Commons websites that enable the usage of intellectual multimedia with recommended methods of attribution:

1. Attribution
2. Attribution – Share alike
3. Attribution-NoDerivatives
4. Attribution-NonCommercial-ShareAlike
5. Attribution-NonCommercial
6. Attribution-NonCommercial-NoDerivatives

When using artifacts from these resources, be sure to attribute them in your e-learning courses according to the instructions provided in the logo. Sometimes you may come across material that says it is free of copyright, but that is very rare.

Copyright free implies that the multimedia artifacts have been made available for public use in any way (commercial or educational) without any restrictions. These resources typically fall in

4.2 Fair Use of Third Party Copyrighted Material

In the following we provide examples of application of the concept of fair use when seeking to use third-party copyrighted materials in online education.

In cases where fair use does not apply, alternatives are suggested, for example using materials that are open access, that have open licenses, or that are in the public domain. It is also possible to purchase a license to use a work.

In order to balance the needs of users with those of rights holders and to preserve copyright's purpose to promote science and the useful arts, copyright laws contains a number of exceptions, check your country applicable legislation.

Example of exceptions are:

Fair use — Permits use of copyrighted material without acquiring permission. Examples of fair use include criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, and research.

Library copying— Allows libraries to make copies of works for preservation, research and study, and interlibrary loan.

First sale doctrine— Limitation on the copyright holder's distribution right that states that once a copy of a work has been lawfully sold, the owner of the copy is free to resell it, rent it, loan it, or give it away. Allows for library lending, video rentals, used book and CD sales, and the ability to give copyrighted materials as gifts.

Exception for public displays -- Allows the owner of a lawfully made copy of a work to display it to the public at the place where the work is located. Allows for display of art in museums and bookstore and library displays, for example.

Displays and performances in face-to-face teaching— Allows for the performance and display of copyrighted materials in the course of face-to-face teaching at nonprofit educational institutions.



Displays and performances in distance education — Ability to display or perform certain types of copyrighted works in the course of distance education. is subject to many conditions, including establishing institutional policies and implementing technological controls.

Computer Software — Owners of computer software can make backup copies and modify the software so that it works on a specific computer platform.

Architectural Works — Anyone may take and use photographs of publicly visible buildings without infringing the copyright in the architectural design.

Special formats for the blind or other people with disabilities — Organizations that serve the disabled can reproduce or distribute copies of previously published, nondramatic literary works in specialized formats for use by the blind or other persons with disabilities.

Many of the exceptions in copyright laws apply only to certain types of works under very specific conditions. The exceptions can be difficult to understand and apply without the advice of a lawyer.

In contrast, fair use is easier to understand, applies to all types of works, and is flexible. It is for these reasons that this guide recommends relying on fair use when deciding when and how to use (or not to use) third-party copyrighted material in online education.

One must consider four factors to decide if a use is fair: The ***purpose*** of the use, the ***nature of the copyrighted work***, the ***amount of the work used***, and the ***effect of the use on the market***.

These factors are intentionally broad so that they can be applied flexibly. The result, however, is that many situations fall into a gray area. *You must make a reasonable, good faith evaluation of each situation on a case-by-case basis.*

Every situation is different, and fair use determinations are very fact-based. Note that ***an educational use is not sufficient by itself*** to pass the fair use test.

Classroom exception allows the performance or display of a work by instructors or students in the course of face-to-face teaching activities of a nonprofit educational institution in a classroom or similar place devoted to instruction.

4.3 Other methods to access copyrighted material

In addition to obtaining permission or meeting one of the statutory exceptions described above, there are other ways that you can obtain access to copyrighted material. Faculty may place original versions of books, articles or other media (legally obtained) on reserve with the library for student use. Copies of that material may also be placed on reserve if the fair use test is met. Below are specific policies and instructions from the library about the reserve process.

Another acceptable method for online courses is to include a ***link to the source of the material***. Pointing students to a web site such as YouTube or a newspaper, or to library resources, is allowable because you are not making a copy.

Similarly, you could create a ***virtual course pack***, as mentioned above, ***that includes links to external web sites or library resources***.

5 Best Practice Summary: Using Third Party Material in e-Learning Courses

There are many options for copying, displaying or performing copyrighted material. But first, determine if the material is actually subject to the copyright laws, by asking:

- Is the work under the CC Common Criteria copyright and the intended use allowed under CC?
- Is the work in the public domain
- Has the copyright expired?

Ways to use copyrighted material without making a copy:

- Place the original material on reserve at the library.
- Incorporate links to the material in a “virtual course pack.”
- For online courses, provide a link to the source of the material.

Ways to copy, display or perform copyrighted material:

- Obtain permission from the author.
- Use a copy for which performance rights have already been purchased. Meet the fair use requirements.
- Meet the requirements for face-to-face classroom use.
- ***Remember to include proper attribution to the copyright owner.***



6 References Resources for Copyright and Fair Use

<http://www.lib.umn.edu/copyright/checklist.phtml>

Fair Use Analysis Tool of University of Minnesota. also contains a lot of information about fair use and other copyright topics.

http://fairuse.stanford.edu/Copyright_and_Fair_Use_Overview/index.html

Stanford University site provides a comprehensive, up to date webpage of resources on fair use, including an excellent page on Academic and Educational Use:
http://fairuse.stanford.edu/Copyright_and_Fair_Use_Overview/chapter7/index.html

<http://copyright.lib.utexas.edu/>

A resource of University of Texas, includes a “crash course in copyright” and a discussion of fair use and rules of thumb.