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@guidonld
@giuliapriora

Learning by infringing?

Copyright private ordering in post-COVID remote teaching

Assoc Prof Guido Noto La Diega

Dr Giulia Priora

UNIVERSITY of
STIRLING 

INSTITUTE
OF LAW,
POLITICS AND
DEVELOPMENT 

 Sant'Anna
School of Advanced Studies – Pisa

Roadmap

1. Introduction: *why* and *how* to study © terms & conditions
2. Three © issues in Remote Teaching (RT)
 - Control
 - Liability
 - Content removal
 - Copyright exceptions
3. An added value for our IP syllabus
4. Conclusion

Have you read the Terms of Service before joining?

When system dialog prompts, click **Open link**.

If you have Zoom Client installed, [launch meeting](#). Otherwise, [download and run Zoom](#).

If you cannot download or run the application, [join from your browser](#).

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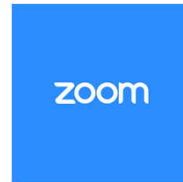


[Privacy & Legal Policies](#)

The Team



The method



- Cross-reading of the terms of service, privacy policies, community guidelines, etc. ('legals')
- **From Emergency Remote Teaching (ERT):** “*temporary* shift of instructional delivery to an alternate delivery mode due to crisis circumstances” (Hodges et al 2020) > **to Remote Teaching (RT)**
- EU copyright law focus, but expertise in UK, Italian, French, US, Dutch, Greek, and German law
 - Infosoc Directive & eCommerce Directive, but also C-DSM Directive

Kluwer Copyright Blog

COPYRIGHT, EUROPEAN UNION

Emergency Remote Teaching: a study of copyright and data protection terms of popular online services (Part I)

Rossana Ducato (Université Catholique de Louvain), Giulia Priora (Scuola Superiore Sant'Anna), Chiara Angiolini (University of Trento), Alexandra Giannopoulou (Institute for Information Law (IViR), University of Amsterdam) Bernd Justin Jütte (University of Nottingham, School of Law), Guido Noto La Diega (University of Stirling), Leo Pascault (Sciences Po Paris), and Giulia Schneider (Scuola Superiore Sant'Anna) / May 27, 2020 / [Leave a comment](#)

Copyright and Remote Teaching in the Time of COVID-19: A Study of Contractual Terms and Conditions of Selected Online Services

Léo Pascault

Bernd Justin Jütte

Guido Noto La Diega

Giulia Priora

Three © issues in remote teaching (RT)

- 1. Control**

2. Liability

3. Content removal

4. Copyright exceptions

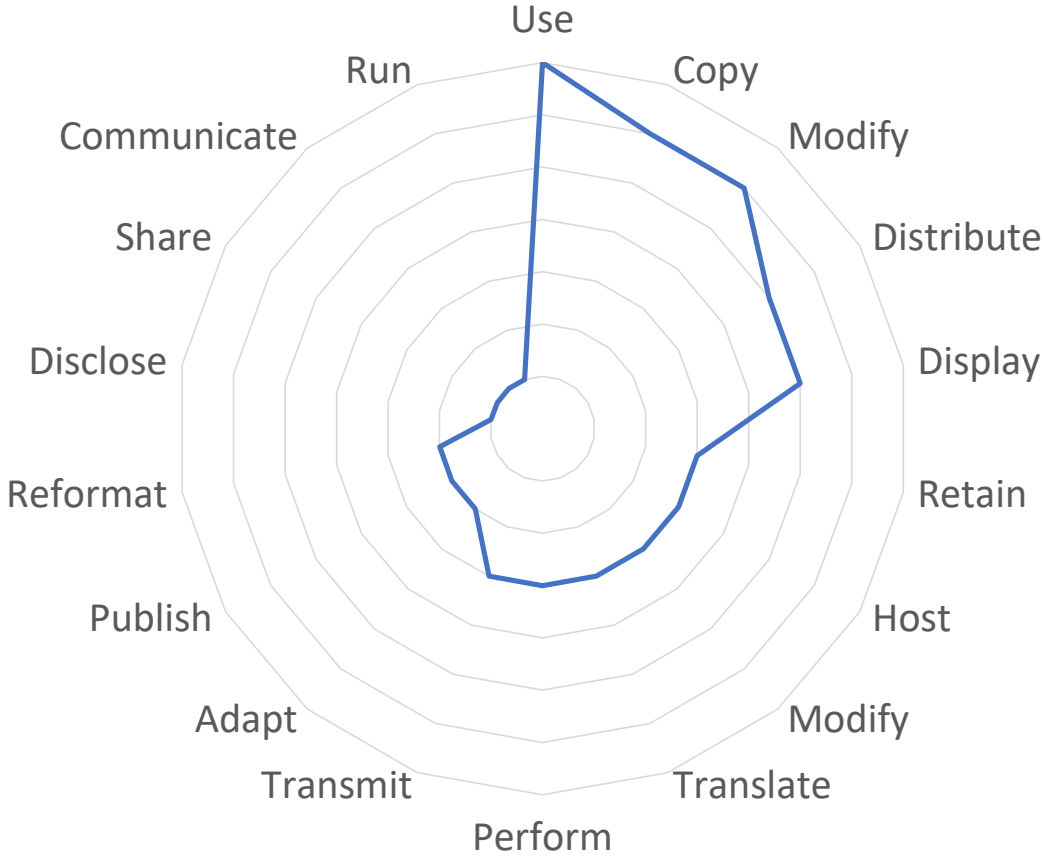
Ownership is nothing without control

- RT users (teachers and students) **retain ownership** of their content once uploaded/shared on the RT platforms
- Does it matter? No: formal ownership is increasingly less relevant, for what really matters is **factual control** over the content (ISHTIP 2017)
- Control is typically negotiated and transferred by means of **licenses**
- Acts, purposes, qualities




















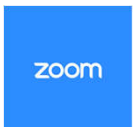


Photo of Carl Lewis taken by Annie Leibovitz in 1994 for Pirelli

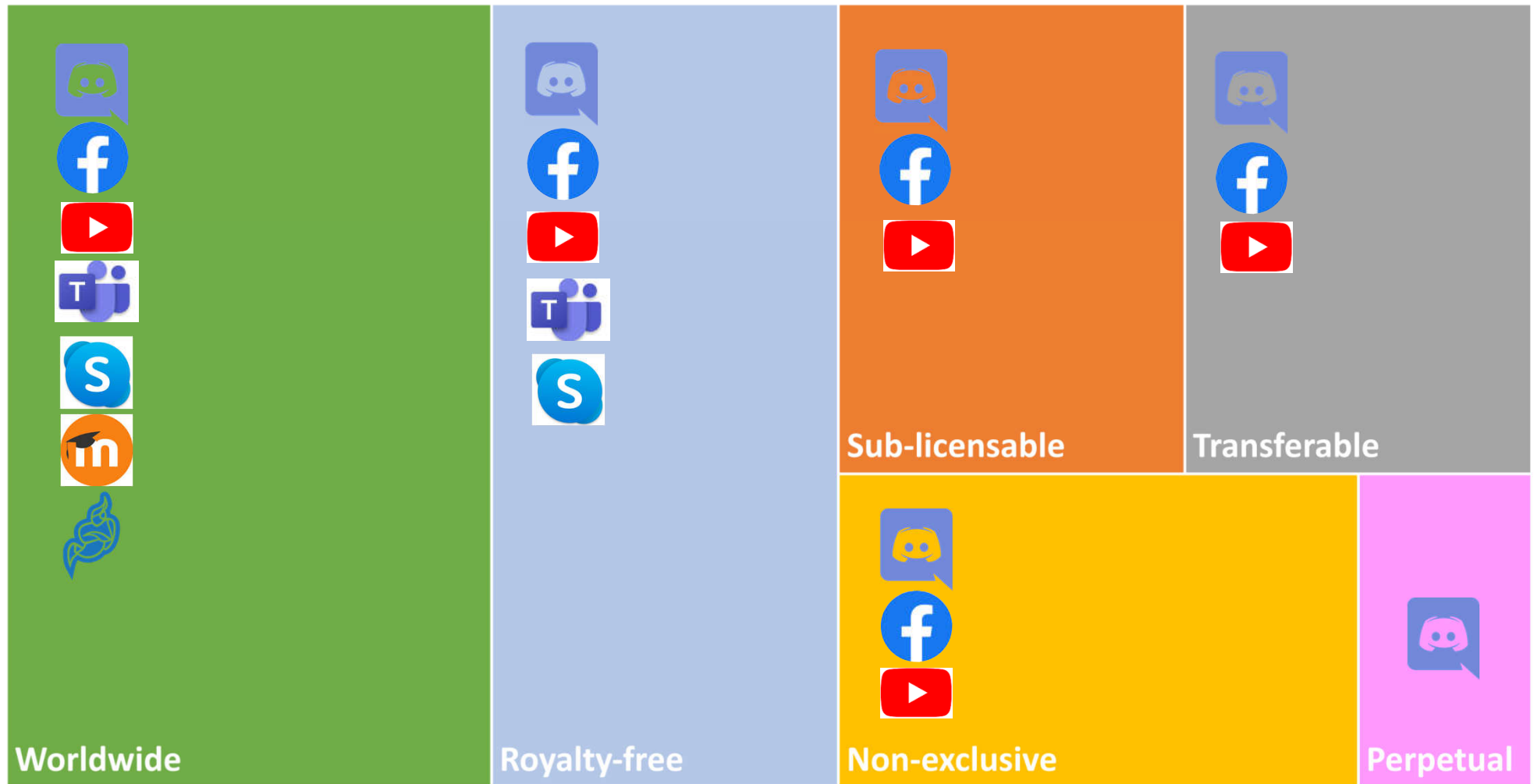
Licensed acts in Emergency Remote Teaching



RT licenses: purposes

- User's content is licensed ***“solely for the limited purpose of operating and enabling the Service to work as intended for You and for no other purposes”*** 
- To ***“improve the service”***     
- For a ***“personalized experience”*** and other **commercial purposes**  
- License to **other users** through the service   
- License to **third-party providers** incl. R&D      
- ...   

QUALITIES OF THE LICENSES OF EMERGENCY REMOTE TEACHING SERVICES



Three © issues in Remote Teaching (RT)



1. Control

2. Liability

3. Content removal

4. Copyright exceptions

Online enforcement of ©: the role of the platforms

- What happens if we upload/share contents **without the owner's permission?**
- © enforcement online relies on **rightsholders asking platforms to remove/disable** access to content (eCommerce Directive, art 14)
- This is increasingly done in **automated** way  
- Soon an incentive to implement “**upload filters**” (C-DSM Directive, art 17) -> self-censorship
- ***Same activities wouldn't create risks in traditional classrooms!***











Teachers as the new © cops?

- **Learning relies on third-party content** and, when done online, it requires “restricted acts” such as copying, communicating to the public, and adapting
- *“You acknowledge and agree **you are responsible for the acts or omissions of any person** using the MoodleCloud Services (each a User, collectively referred to as Users). You must ensure any such User using or accessing the MoodleCloud Services does so in accordance with these Terms”*
- 55% of ERT providers extend teachers’ **liability to content shared by their students**



Conditional sharing and chilling effects

- “You represent and warrant that Your Content is original to you and that **you exclusively own** the rights to such content” 
- Users can upload/share content only with “**prior written consent of the owner**” 
 - Similar “necessary rights”    
 - “You are responsible for obtaining any (...) licenses (...) at your cost, and for **providing us with the (...) licences** (...) upon request” 
- “(T)he Content you submit must not include third-party intellectual property (such as copyrighted material) unless you have permission from that party or are **otherwise legally entitled to do so**” 

Three © issues in Remote Teaching (RT)

1. Control
2. Liability
- 3. Content removal**
4. Copyright exceptions

Content removal and counter-notice

- Users will usually be notified if infringing, with the exception of  that doesn't have any **notice-and-takedown** procedure in place

- **Sanctions**

[window for user to remove content] 

(1) forced removal of content



(2) suspension of the account



(3) termination of the account



- **No counter-notice**    

Three © issues in Remote Teaching (RT)

1. Control
2. Liability
3. Content removal
4. **Copyright exceptions**

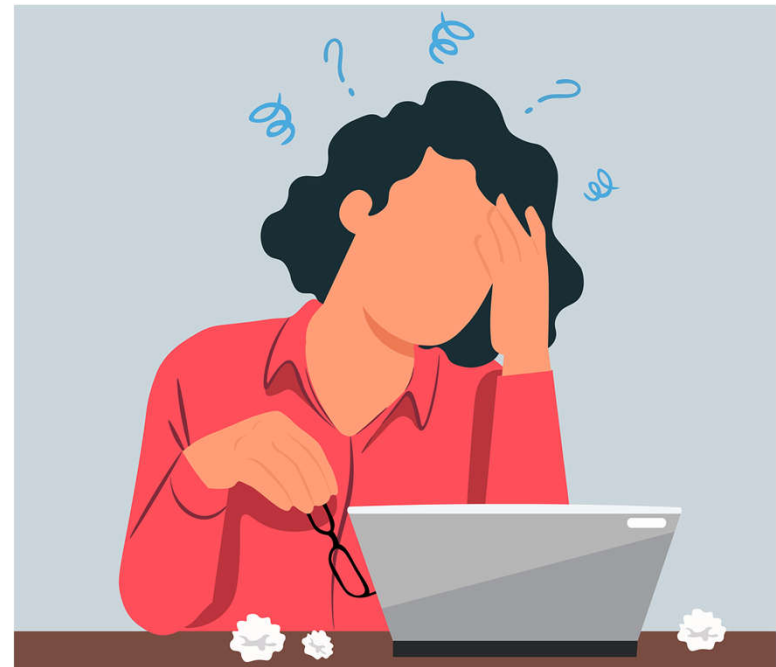
Exceptions to copyright: education and teaching

- Copyright strikes a **balance** between the proprietary interests of the right holder and competing private and public interests, including the **fundamental right to education** (CFREU, art 14; ECHR, prot 11, art 2)
- It does so through built-in exceptions and limitations: you don't (always) need the owner's permission to use materials
 - *Art.5(3)(a) InfoSoc Directive – illustration for teaching and research*
 - *Art.5 CDSM Directive – digital teaching activities*
- Overly strict liability restrictions (e.g. upload filers) and technological remedies (e.g. automated content removal) **don't** cope with © exceptions → problem of overprotection (Samuelson 2020)

An added value our IP syllabus

Main advantages stemming from

- Structure of the analysis
- Motivation and direct engagement of students with the subject
- Untapped opportunity to showcase the importance of private ordering in © and IP scenarios
- Critical aspects linking to the most heated academic and policy debates



How to do so?

“Conventional” ways

- Add related insights and examples to our teaching materials
- Design a quiz/case study requiring students to go through provided terms

Innovative and blended ways

- Get inspiration to re-design the syllabus: from real-life problems to law
- Set up an “interactive game” during the course: e.g. class creates a YouTube account, upload hypothetical music teacher material, follows developments

Conclusions

- **Insidious terms:** be aware and read before using RT services
- **Overly strict terms:** teachers risk becoming the new © cops: finding room for freedom of expression and right to education?
- **Chilling effects:** remember that you have a right to use third parties' © without their permission (© defences/exceptions)
- **Let's stay optimistic and see the silver lining:** Teaching IP may have never been so exciting!

Thank you! Questions?

Assoc Prof Guido Noto La Diega

Dr Giulia Priora



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