

Protocol for the publication of Teaching Materials in the Virtual classrooms of the ULL

In recent years, the virtualization of part of the teaching activity at the University of La Laguna (ULL), made possible by information and communication technologies, has allowed supplementary teaching materials, such as readings, documents, and texts, to be included in virtual classrooms. This may lead to the unintended infringement of regulations governing intellectual property rights.

In its role as a public service institution, the ULL uses this Protocol of Action¹ for all teaching and research staff when they include materials in their virtual classrooms. Given the complexity of the issue, doubts may arise as to when these actions, aimed at making materials available to students to support the learning process, may or may not conflict with the intellectual property rights of their authors, even when such use takes place solely within a university intranet.

The ULL's commitment to respecting both protected legal interests (authors' rights and students' right to education) establishes the following guidelines for teaching and research staff when making materials available to students:

1. Rules applicable to the reproduction or literal scanning of books, articles, and documents subject to open or free intellectual property

For these purposes, the following are considered open-access documents² and, as such, may be shared freely and without restrictions:

- a) The content of official gazettes such as the Official Journal of the European Communities (OJEC), the Official State Gazette (Boletín Oficial del Estado, BOE), Official Gazettes of the Autonomous Communities, etc.
- b) The text of judicial decisions, with the recommendation that texts available in public databases (for example, Judicial Documentation Centre (Centro de Documentación Judicial, CENDOJ) be used whenever possible.
- c) Content published under copyleft licenses such as Creative Commons or similar, provided it is used within the limits established in each respective license.
- d) Works which, having been financed with public funds, form part of the assets of the University of La Laguna (arts. [80.5](#)³ of Organic Law 6/2001, of the December 21, on Universities, and [53](#)⁴ and [54](#)⁵ of Law 2/2011, of March 4, on Sustainable Economy), or which, by agreement with other research centers, are accessible in

¹ Forwarded by the General Secretariat of the Conference of Rectors of Spanish Universities (GCRSU), and prepared by the General Secretariat of UNED, which has expressed its consent for it to be used by other universities.

² The term document also includes those in digital or audiovisual format.

³ <http://www.boe.es/buscar/act.php?id=BOE-A-2001-24515#a80>

⁴ <http://www.boe.es/buscar/act.php?id=BOE-A-2011-4117#a53>

⁵ <http://www.boe.es/buscar/act.php?id=BOE-A-2011-4117#a54>

the institutional repository <http://riull.es> or in any of the repositories of the “Recolecta” network.

- e) The digital version of works published in open access because they were funded by the General State Budget, under the terms of [Article 37](#)⁶ of Law 14/2011, of June 1, on Science, Technology and Innovation.
- f) Works that, by the will of their authors, have been incorporated into public repositories with free access, under the terms established therein, in accordance with the Third Additional Provision, concerning the promotion of the dissemination of digital works, of Law 23/2006, of July 7.
- g) Doctoral theses published by universities in accordance with Article 21.4 of Royal Decree 1393/2007, as amended by Royal Decree 99/2012. When the text considered of interest for the course can be found both in doctoral and a later work by the same author, the original thesis must be reproduced for the duration of the procedure for obtaining the doctoral degree (public display period). This publication does not authorize copyright and will be a URI that, in many cases, expires.
- h) Works that, due to their age, are in public domain⁷.

2. **Making proper use of the right of quotation and illustration for teaching:**

The right of quotation consists, in accordance with the Intellectual Property Law ([Art. 32](#)⁸), of “the inclusion in one’s own work of fragments of others’ works of a written, sound or audiovisual nature, as well as isolated works of a plastic, figurative photographic or analogous character, provided that they are works already disclosed and their inclusion is made by way of quotation or for analysis, commentary or critical judgment. Such use may only be carried out for teaching or research purposes to the extent justified by the purpose of such incorporation, indicating the source and the name of the author of the work used.”

From the foregoing, it follows that the use of third-party material within virtual teaching materials must comply with the following:

- When the written text to be included comes from works published in print and scanned, it shall be converted into a text document through OCR programs, and its incorporation into the virtual course must be carried out in an elaborated manner with precise reference to the source and the author’s name, in accordance with the applicable methodological criteria in each case, inserting between, specification, assessments or, at least, linking it with other references.

⁶ <https://www.boe.es/buscar/act.php?id=BOE-A-2011-9617&p=20110602&tn=1#a37>

⁷ A possible tool to facilitate the calculation is provided in the following diagram by Pedro Jiménez, under a CC-BY license, at the following link:
<http://13festival.zemos98.org/sites/13festival.zemos98.org/IMG/pdf/CalculadoraDominioPublico.pdf>

⁸ <http://www.boe.es/buscar/act.php?id=BOE-A-1996-8930#a32>

- Use must be proportionate; no more material than necessary to illustrate the issue under explanation or analysis should be reproduced, so that it is justifiable for the intended purposes.

3. **Links to web pages where documents of interest for the virtual course appear:**

When a document of interest for the virtual course is accessible on a web page, the doctrine of the Spanish Provincial Courts allows the link to be included through a hyperlink. Good practice dictates that it be accompanied by the corresponding citation and, where appropriate, by any comments necessary to accompany the text.

In the event that a reliable native is received from the author, or from the person exercising their rights on their behalf, that the link included in the specific teaching material refers to a work whose publication is not duly authorized, it must be removed.

4. **Regarding the literal reproduction or scanning of books, articles and documents subject to restrictive intellectual property rights:**

Files containing all or part of books, articles and other documents (the term document also includes those in digital or audiovisual format) protected by the Intellectual Property Law may also be attached when prior authorization for use has been obtained from the author, or, if the author has assigned exclusive exploitation of the work or its management to a publishing house or collecting society, when permission has been obtained from them for its total or partial publication, in addition to what has been indicated regarding ownership of the product of publicly funded research after 24 months from publication. The consent of copyright holders for the use of their works as teaching material must be formalized through a total or partial assignment agreement. In any case, in order to conclude these assignment agreements when they entail a cost for the ULL, they must be authorized in accordance with the corresponding internal procedure.

Express authorization from the author will also be required for any transformations of a literary, artistic or scientific work. Notwithstanding the foregoing, if once the document has been published, the lecturer-user of the materials receives a request from the author asking for its removal, they must contact the Virtual Teaching Unit to assess whether its removal is appropriate.

Text advised by Dr. Luis Fajardo López, Lawyer and Associate Professor of Civil Law at the ULL.