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JISC Conference 2008

Legal Issues arising from Web 2.0 engagement in FE and HE

11.15 – 12.15

Hall 8a

JISC



Legal issues arising from Web 2.0 engagement in FE and HE

Session Chair

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IP issues arising from Web 2.0 engagement in FE and HE

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COPYRIGHT ISSUES ASSOCIATED WITH WEB 2.0

Charles Oppenheim

- Pretty much everything already on the Web or created electronically is copyright
- So standard rules regarding copyright apply, e.g., lifetime, ownership, restricted acts, exceptions to copyright
- However, the Web 2.0 poses particular issues both because of the collaborative nature of Web 2.0 activities and the informal nature of those activities
- In particular, there are major questions about **who** owns copyright in collaborative works; about the **risks** in using third party copyright materials without asking for permission and possibly relying on an “implied licence” to copy; and about the nature of the **contractual relationship** (if any) between the various parties involved in developing collaborative works

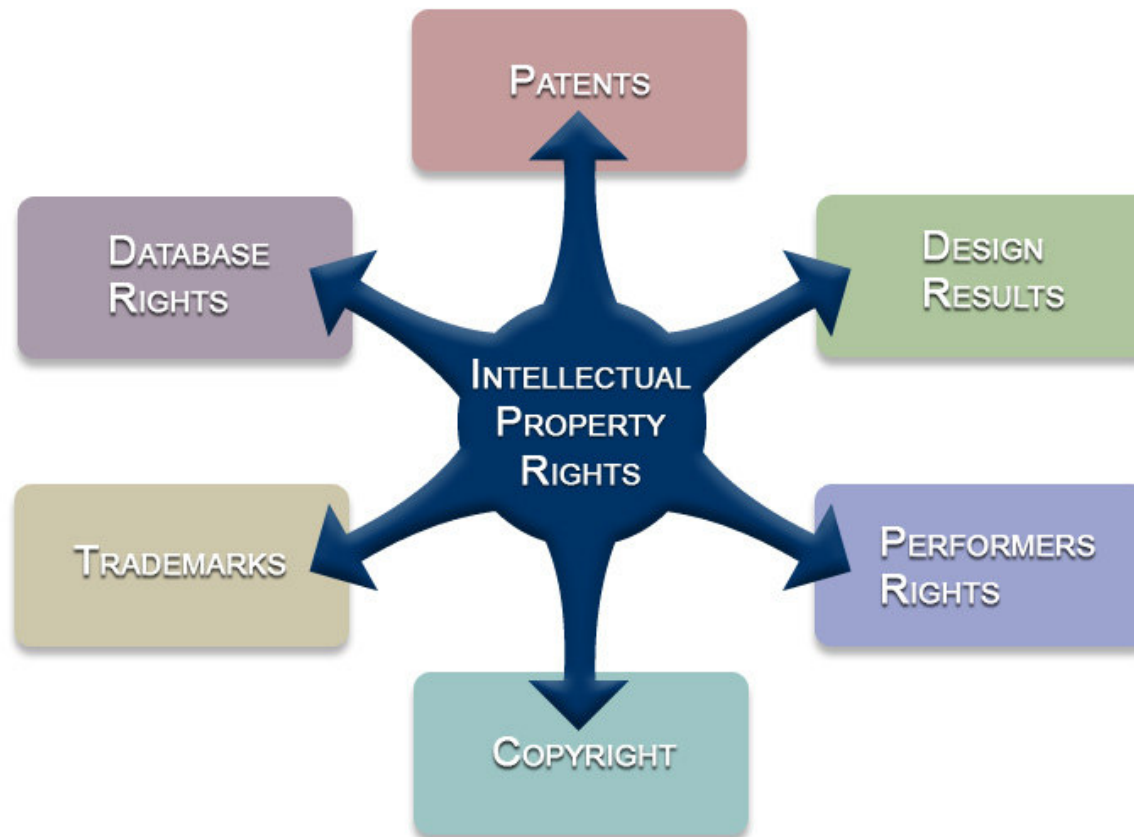
Web2.0 copyright risks

- Lack of clarity about ownership in collaborations
- Difficulties in policing and enforcing any infringements that might occur
- Lack of clarity whether exceptions to copyright may or may not apply in particular cases
- Users of Web 2.0 services believing that copyright is irrelevant or indeed should be deliberately flouted
- Multiple layers of rights, including Moral Rights, Performers' Rights, database rights, and of potential owners – individuals, their employers, large corporations, funding agencies, the JISC....
- Different traditions of the industries in different media (still images, moving images, sound recordings, music, text....) in terms of attitudes towards copyright and willingness to negotiate contracts
- Particular risks when using or developing software, or doing text and data mining
- All of this means it's a bit of a nightmare!

So how does with deal with it?

- Involve the great number of stakeholders at various levels
- Gain permissions from third parties
- Need to ensure that third party copyright is not infringed.
- Need for appropriate terms and conditions in collaborative agreements, and on public facing Web pages, to ensure that copyright problems (and indeed other legal issues) do not arise

Consists of some rights granted automatically, and some for which you have to go through a formal application process



It's not just copyright you have to think about!

- **Copyright** – automatic right protecting creative works
- **Patents** – registration required for innovative ideas
- **Trademarks** – registration required for signs/symbols distinguishing specific product or service (also trade names, which do not require formal registration but which offer weaker protection)
- **Registered Designs** – registration required
- **Databases** - collection of independent works, data and other material arranged in a systematic/methodical way and accessible by electronic or other means; automatic if time, effort, money expended in its creation
- **Moral Rights** – in particular, the right of individuals to be identified as creators, and the right of a creator to object to derogatory treatment of his/her work
- **Performers Rights** – applies to recording or reuse of all kinds of performances, including musical, acting, dance, lecturing, podcasting...

Role of licences

- Licences are the mechanisms to facilitate the use of copyright materials
- In effect, a licence says “notwithstanding the restrictions copyright law places on your copying, adapting or disseminating this material, I as rights owner grant you permission to do certain acts for certain purposes (and maybe for a certain fee)
- This means:
 - The rights third parties grant you (rights in)
 - The rights you grant to third parties (rights out)
- Many different types of licences
- Because contract law usually over-rides copyright law, you need to be sure that a licence you get, or give, is very precise as to what can and cannot be done with the materials in question

What you need to think about in your use of Web 2.0

The start

- Does this application involve a clearly identified group of people? If so, a consortium agreement is needed. If not, nonetheless, ground rules need to be laid down about ownership of contributions
- This is boring, but necessary; the risks are too great if you put your head in the sand re copyright and Web 2.0

Technology

- Am I developing a new technology?
- Am I developing an existing technology?
- Am I deploying an existing technology?

The Content

- Who is involved in developing content ? Is content being created as part of employee duties? Who owns it??
- Am I using content generated by a third party?
- Risk management – using third party content or technology without permission; notice and take down procedures and how to advertise them; how much effort to put into getting permissions; what to do about orphan works; assessment of riskiness of third party content

The output

- How do I want my technology and content to be made available to users (over the short and longer term)?
- Do I want to ensure that exploitation of this material is restricted in any way (e.g., commercial re-use), and if so, how do I propose to exercise such control?

Things could be worse

- New Russian Copyright Act states “in cases of repeated or gross violation of intellectual property rights, a legal person committing such a violation may be liquidated”
- And there is a wonderful Web site from a JISC-funded project to help you.....

Web2Rights Project

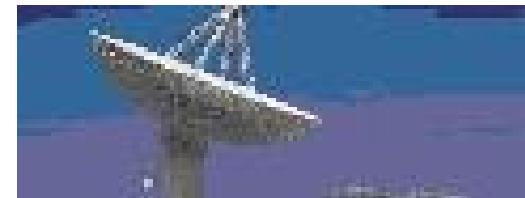
- *Our remit:* to develop IPR-related resources and guidance to support JISC-funded projects and programme managers in the Users and Innovations programme in their engagement with Web2.0
- *The team:* Naomi Korn, Dr Charlotte Waelde, Professor Charles Oppenheim, Dr Neil Witt, Emanuella Giavarra, Derek Stephens
- www.web2rights.org.uk provides a wide range of resources, including reports and advisory notes, in the IPR/Web 2.0 arena

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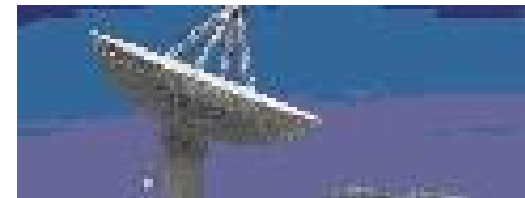
And now for something completely different

- *Beyond Copyright*
- *Copyright-related Rights*
- *Patents*
- *Design Rights*
- *Trademarks*
- *Database Rights*



And even more different...

- *Data Protection*
- *Freedom of Information*
- *Accessibility Duties*
- *Liability Issues*
- *e-Security Issues*



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JISC Conference 2008: Enabling Innovation

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Joint Information Systems Committee

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