

A Project Perspective The Northern Ireland Integrated Managed Learning Environment

Developing Lifelong Learner Record Systems
and ePortfolios in FE and HE: Planning for,
and Coping with, Legal Issues.

The NIIMLE Project

- The Northern Ireland Integrated Managed Learning Environment (NIIMLE) is a large consortium-based project involving Northern Ireland's 2 campus-based universities and 16 further education colleges
- The project's key aims are
 - to build a cross-institutional Managed Learning Environment (MLE) for Northern Ireland facilitating the mobility of the lifelong learner supporting collaboration between FE and HE institutions
 - to encourage students to see FE and HE in a more unified, holistic way by exploring progression routes to higher and complementary studies, and to facilitate their continued movement within the sector

Legal Issues

- NIIMLE and the Legal Study are both involved in the JISC MLEs for Lifelong Learning programme
- I have worked with NIIMLE on three specific legal issues:
 - Data protection agreements
 - Open Source Software licensing
 - Consortium Agreement
- NIIMLE is not unusual in requiring advice in these areas – although they were particularly proactive in identifying and seeking solutions to potential problems.

Data Protection

- Concerns about:
 - respective roles of the institutions within the project.
 - liability of institutions for processing incomplete and/or inaccurate information received from other partners
 - need for one or more legally binding agreements on DP
- Solutions:
 - Mapping the data flows and responsibilities between the institutions. Result - Queens University Belfast identified as data processor for NIIMLE, all partners considered to be joint data controllers for the personal data contained in the system.
 - Drafting of Data Controllers Agreement – outlining responsibilities of project partners, and Data Processing Agreement between joint data controllers and data processor.
 - Arrangements approved by the Information Commissioner

Open Source Licensing

- JISC suggestion that software created in funded projects should be put out under OSS licence.
- No guidance available as to appropriate type of OSS licence.
- Discussion of issues with project manager
 - Ownership of © in the code
 - Projected development of NIIMLE project and exploitation of deliverables after JISC funding
 - Possibility of commercial venture with private enterprise
 - Evaluation of different licence options – Permissive, Persistent, Persistent & Inheritable, Dual Licensing
 - Decision on licensing not currently known

Consortium Agreement

- Two key issues - discussion of meaning of CA, suitability of CA as a basis for future development of the NIIMLE deliverables
- Problematic areas of the CA:
 - Duration of CA
 - Apparent ability of JISC to override agreements between partners
 - Conditions for Membership of the Consortium
 - Intellectual Property
 - Commercial Exploitation
 - Liability of partners
 - Disputes and Arbitration
 - Withdrawal of partners/Expulsion of partners
 - Expansion of the Consortium
 - Termination, Renewal/Extension

Consortium Agreement

- Restructuring the CA would not take a great deal of work
 - But the parties will then have to agree to the terms of the revamped CA at a point when the project is coming to an end.
- The IPR section could cause significant problems
 - potentially too many rightsholders to allow for effective use of the deliverables
 - to open source project software might require up to 18 institutions to agree to it

Overview

- These types of problem are prime examples of issues that would ideally have been dealt with at an early stage in the project - or even before it began.
- Dealing with these types of issues in the mid-late term often means that:
 - necessary resources (esp. time and finance) are not available to do the necessary work
 - it is difficult to retrofit processes, because necessary records are often not kept as projects progress, and relevant staff have left without documenting their work
 - agreed solutions are now more difficult because the parties' agendas have changed, or no-one remembers why or when a particular decision was taken

In conclusion...

- I would note that the staff of the NIIMLE project have made a significant contribution to the Legal Study, and today's event, in terms of their efforts to identify potential legal problems facing their project, and in their willingness to share the fruits of their progress towards solutions to those problems
- In particular, the NIIMLE approach to data protection issues was an important factor in grounding the work that the Legal Study carried out with the UEO project