

Scoping Intellectual Property Interests

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

Copyright – Bare Bones I

- © exists in any original work regardless of artistic merit from moment of creation.
- © in the UK requires no formal procedure to protect work.
- © initially belongs to the author, unless created in the course of employment, when it belongs to author's employer
- © lasts for author's life + 70 years

Copyright – Bare Bones II

- Rightholder has exclusive right to do certain things in relation to the work - making a copy, public performance, broadcasting - 'bundle of rights'.
- These rights can be assigned, licensed, inherited etc. as a bundle, or as individual rights.
- A © infringement will occur when an individual copies a work (or a substantial part of a work) without authority of the © holder (unless legally permitted – fair dealing).
- Licensing of © is common – the rightholder grants permission to others to do certain things with the work, but retains overall control of it – lawful use of work is conditional on observance of licence terms.

Copyright – Bare Bones III

- © like other 'intellectual property rights' (IPRs) allows expressions of ideas to be propertized.
- However, © and other IPRs can be used to achieve other aims than simply generating revenue for the rightsholder:
- Two examples of different approaches are:
 - Open Source Software – making program source code available for use by all comers under a licence
 - Creative Commons Licences – enabling the sharing of a range of creative works via a licence with less onerous terms than full copyright.

Ownership & IPRs in Systems I

- Issues to consider:
 - Is the software proprietary?
 - If the system software is owned by a vendor
 - Terms and conditions of use – licensing restrictions
 - Compliance with particular standards – current and future e.g. metadata – IMS LIP
 - Compatibility with other systems
 - Ability to request/add additional functionality
 - Collapse or takeover of vendor - ability to access source code to modify and update (escrow)
 - Accessibility issues

Ownership & IPRs in Systems II

- If system software was created by employees of an institution, or by a multi-institutional project:
 - Who owns IPRs e.g. © in the application (or elements of it) – employees, contractors etc?
 - Have appropriate assignments or licences been obtained?
 - Is there a formal agreement between project partners as to future ownership & licensing of IPRs?
 - Are that agreement's terms appropriate for planned future development & exploitation?
 - Do project partners' staff understand the terms of the formal agreement?

Ownership & IPRs in Content

- Issues to consider:
 - Who owns data held in LLR/ePortfolio systems about students?
 - An FE/HE institution?
 - A number of FE/HE institutions?
 - The student
 - Other third parties
 - At present, it questions about the implications of 'ownership' of such data have not been widely raised
 - A more effective concept seems to be that of 'stewardship', i.e. that institutions have certain obligations that they owe to students with regard to the data – e.g. data protection rights

Ownership & IPRs in Content

- Issues to consider:
 - Who owns data held in LLR/ePortfolio systems created by students?
 - Data created by them such as coursework (UG), research output (PG).
 - Data created as part of wider PDP activities
 - Some FE/HE institutions currently appear to treat student-created works as belonging to the institution, if they are created during the student's studies.
 - This does not seem to accord with © law – i.e. that there has to be a written assignment of ©.

Ownership & IPRs in Content

- Particular difficulties may arise with advanced learners engaged in research sponsored by 3rd parties e.g. a Ph.D. student sponsored by a pharmaceutical company.
- Research students may create original works in the course of their studies which by contractual assignment (e.g. sponsorship agreement) belong to a 3rd party.
- Equally commercial confidentiality may place restrictions on the type of materials that advanced learners can place in their ePortfolio and display to other parties .
- 'Ownership' of the content of an ePortfolio system may be considerably commingled, and it is likely that institutions will have to develop rules/protocols in conjunction with students, sponsors and others to set the parameters of what may be recorded and displayed.