



E-Learning: Practices, Policies & Law

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Record Legal Study.

The Legal Study

- The Legal Study was set up to:
 - Identify & assess legal risks in development of LLR & ePortfolio systems at institutional, regional and national level
 - Assess legal risks relating to wider use of LLR & ePortfolio data - linkages to external data sources
 - Liaise with & provide guidance & support to existing JISC LLR/ePortfolio projects
 - Produce strategic reports on legal issues affecting the direction & viability of LLR & ePortfolio systems
- In practice much of the work has centred on ‘fire-fighting’ legal problems faced by JISC eLearning projects.

Context of Legal Risk

- Legal problems usually arise from:
 - Poor operational and strategic planning
 - Misunderstandings between partners about direction of project, project outcomes, project ownership, funder requirements etc.
 - Misunderstandings about nature and scope of relevant law
 - Failure to seek advice on legal issues
 - Non-existent or inadequate mechanisms for legal compliance
 - Poor communication of aims and objectives to users.

Key Legal Problems

■ Consortium Agreements

- Lack of, late development of, poor quality of, misunderstanding of, ignoring of.

■ Intellectual Property

- Lack of understanding of basic principles, lack of planning/time/resource, failure to adequately parse or construct licence agreements, lack of central policy.

■ Data Protection & Confidentiality

- Lack of time/resource allocation, education, linkage with institutional policies and procedures. Lack of comprehension of why these might be important.

Cultural & Practice Issues

■ FE/HE cultures of

- ‘Amateurism’ + ‘Neat stuff’, ‘We’re special’, ‘Short termism’, ‘Insularity’.

■ Practice difficulties

- Poor support/sharing/recording of essential project know-how – intra or inter-institutionally
- Lack of strategic thinking beyond technical implementation
- Failure to plan for success.

Legal Processes for Projects I

■ Preliminary stage

- Legal issues are an essential part of project risk assessment
- Need to identify legal issues relevant to project development
- Conduct risk assessment and consider how legal issues might be appropriately addressed
- Ensure appropriate time/financial costs allocated
- Include legal planning in project timetable/milestones
- Assess need for liability cover/insurance.

Legal Processes for Projects II

■ Start of a project

□ Consortium Agreement (or Project Plan)

- Principal actors and term of agreement
- Obligations of principal actors inc. data protection
- Administrative framework of consortium
- Entry and departure of principal actors
- IPRs (background and foreground) & exploitation
- Liability and warranties
- Exit strategy

□ Ensure project team understand what the Consortium Agreement means!

Legal Processes for Projects III

- Project lifetime – development and audit
 - Review of legal risks & project responses
 - Awareness of changes to legal environment
 - Continuing documentation of processes, decisions and outcomes
 - ‘Big Red Bus’ scenarios
 - Continuing training, esp. where staff turnover
 - Knowledge Management issues
 - Dialogue with institutions & partners

Legal Processes for Projects IV

- As projects enter new phases or end
 - Appropriate to engage in a legal health check
 - Ensure documentation, both administrative & explanatory, is complete and appropriate
 - Complete (or retrofit) and sign off on rights management register, as necessary
 - Ensure that project partners are briefed on legal issues relating to exit strategy
 - If project is continuing, check whether partner agreements automatically continue, or need renewing.

Planning and Oversight

- Identification of legal issues is essential to support appropriate risk analysis and action
 - Adequate time and resources early in project lifecycle
 - Clearly documented rationales for institutional policy.
- Guidelines, protocols and procedures are valuable only if both understood and used.
 - Identification of person/persons with responsibility for development, training and implementation of policy.
- Legal issues will change over time, policies & practices must adapt to these changes