

Web2.0 and IPR

A short scoping study for the Users and Innovation Programme, JISC

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April 2007

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1. Context

Higher Education Institutions (HEIs) and Further Education Institutions (FEIs) have been increasingly using a wide range of new and developing services, software and other technologies to engage and communicate with staff, students and new audiences. Characteristics of the use of these technologies include the use of free collaborative tools which are likely to be remotely hosted, and which can be installed and used easily. The software and technologies are diverse and are reshaping user engagement, the concept of “community” and experiences within the context of teaching, learning, research and administration. However, Web2.0 technologies, present interesting challenges for IPR and the associated proprietary framework in which they operate. Certainly, upon first glance, the two are not synonymous, and to the contrary, Web2.0 technologies fly in the face of everything that IPR represents. Profound issues and questions that arise include:

- Who owns the rights in works that are a result of collective collaboration?
- Can one person economically benefit from the work to which they have collaborated?
- Who owns the rights in ideas?
- How and can rights be given up?
- Can rights exist in a virtual world and who owns them?
- How can data be made entirely open?
- What are the rights issues associated with web archiving?

These issues, if unresolved, present increasing risks of copyright infringement for the tertiary education sector. Indeed, a recent online article in *The Register*¹ reports that in the light of the \$1 billion law suit against Google by Viacom for infringing material posted on YouTube, the Electronic Frontier Foundation (EFF) suggests that media sharing start ups run their site by a lawyer to stay on the right side of the law¹. Future developments on the horizon include proposed EU Enforcement Directives, specifically the Directive on Criminal Measures aimed at ensuring the Enforcement of Intellectual Property Rights, which intends to define specific criminal offences and effectively extend liability to internet intermediaries, ICTs and software vendors. This would have possible ramifications for the provision and use of Web2.0 services and technology in the sector, which do not comply with copyright and other Intellectual Property Rights.

¹ http://www.theregister.co.uk/2007/04/19/eff_google_viacom/

So how can HEIs and FEIs continue to deploy and engage with Web2.0, whilst remaining legal and ethical? What should they be doing to ensure that they can continue to engage with Web2.0 within a legal framework?

It is worth stressing that this short study examines the situation from **the UK point of view** only. However, as is well known, Web 2.0 activities operate across international boundaries and multiple jurisdictions, and so higher risks of infringements are likely. Also, what may be legally safe in the UK may be risky in another country, and as a result, someone involved in activities who happens to travel to another country may find him or herself subject to unexpected legal proceedings, or UK individuals or services may find themselves threatened with legal action by overseas bodies. This is especially common in the area of trade marks and domain names.

2. JISC, IPR and Web2.0

An understanding of the basics of IPR is certainly a prerequisite to the use of Web2.0 technologies. In the recent TechWatch report on Web2.0, it was noted that:

“There are profound IPR issues. Do students (even staff) understand that simply ‘copying and pasting’, uploading commercial video, copying photos etc is not always a legal activity? What are the commercialisation issues with regard to ‘free the data’, who ‘owns’ a student group coursework mash-up or a PhD student’s peer-contributed experimental data that both sit on a Californian server farm? These important questions need to be formally reviewed and commercialisation staff within university administration departments should be made more aware of these difficulties.”²

Issues surrounding IPR and the use and deployment of Web2.0 technologies and services are of substantial interest to JISC and JISC-funded projects for a number of reasons:

- 1) In the future JISC may fund a range of projects which are developing and deploying a range technologies that may have the characteristics associated with Web 2.0. Currently, there is much interest in those which support the communities and community activity such as Second Life³; podcasting; blogs (and team blogs) as well as image and video sharing sites.
- 2) JISC is funding research projects and studies which examine the potential for the use of Web2.0 technology within teaching, learning and research. Recent reports include those on the use of immerse environments within the tertiary education context⁴.
- 3) JISC uses Web2.0 technology to communicate and engage with its projects and the wider FE/HE community, such as the creation of wikis and blogs, in particular those used across JISC Development Group, by the Users and Innovation Programme and the Digital Repositories cluster strands⁵ of the Information Environment.
- 4) JISC needs to retain an awareness of IPR issues relating to Web2.0 technologies as they affect the broader HE/FE community.
- 5) JISC Programme Managers are engaging with a range of Web2.0 technologies to assist their work⁶.

² <http://www.jisc.ac.uk/media/documents/techwatch/tsw0701bword.doc>

³ <http://secondlife.com/>

⁴ http://www.jisc.ac.uk/media/documents/programmes/elearning_innovation/gaming%20report_v3.3.pdf

⁵ http://www.ukoln.ac.uk/repositories/digirep/index/JISC_Digital_Repository_Wiki

⁶ <http://involve.jisc.ac.uk/u-and-j>; www.jisc.ac.uk/merge/

In order to address the issues, this short scoping study provides an assessment of the IPR issues and permissions required by researchers when making text or data openly available on the web or when contributing to different web-based activities with reference to examples and specific case studies. The study concludes with possible solutions as well as some recommendations for future actions. Other legal issues such as Data Protection, Obscenity, Defamation and breaches of contract law are beyond the scope of this paper.

3. What do we mean by Web2.0?

There are various definitions used for describing Web2.0. The term was first coined by O'Reilly Media in 2004⁷ to describe second generation web-based services promoting online collaboration and sharing, although scepticism has been voiced by some, including Tim Berners-Lee about the meaning of the term⁸. JISC Users and Innovation Programme, however, have worked up the following definition⁹ which is used within this paper to provide a framework for the discussion about IPR issues that are likely to arise:

- *The web as a platform*, allowing an application to be delivered and used through a web browser, for example tools such as online word processors or spreadsheets;
- *Things that think*, for example embedding computers into the education or research environment through the use of commonplace mobile and/or entertainment devices, thereby enabling people to interact with the technology naturally and casually wherever they are;
- *An architecture of participation*, in other words the system has been designed to encourage and support users in contributing to it; an example is the application of wiki software being used for the generation of collaborative documents;
- *Data consumption and remixing from other sources*, particularly user-generated data; often these are referred to as mash-ups, where content is often sourced from third parties via an API (Application Programming Interface). There are currently a plethora of mash-ups to be found on the web, utilising anything from local directory listings and web-based mapping software to photographic libraries to generate reviews of events or places;
- *A rich, interactive, user-friendly interface*, where the needs and perspective of the individual user are a priority;
- *Elements of social networking*. Whilst not necessarily a requisite, the social elements of these technologies are important in generating the engagement and user data.

Examples of the range of Web2.0 technologies used within HEIs and FEIs are likely to include the following, although it should be noted that this list is not exhaustive as the existing technologies are proliferating as are the number of new technologies:

- Wikis for collaborative reference works, which might include reference and contributions to existing resources such as Wikipedia¹⁰ and other online encyclopedia which encourage collaborative creation of web and academic resources. As well the use of blank wikis for

⁷ <http://www.oreillynet.com/pub/a/oreilly/tim/news/2005/09/30/what-is-web-20.html>

⁸ <http://www-128.ibm.com/developerworks/podcast/dwi/cm-int082206.txt>

⁹ <http://involve.jisc.ac.uk/wpmu/u-and-i/2007/01/09/next-generation-and-emergent-technologies-web-20-and-social-software-what-do-we-mean/>

¹⁰ <http://www.wikipedia.org/>

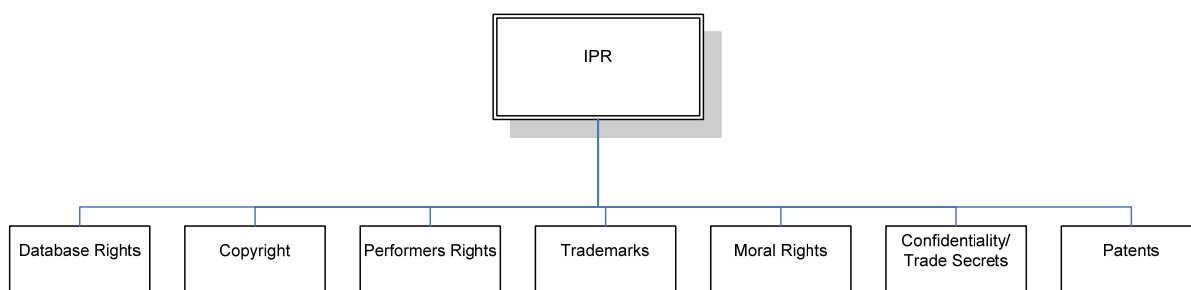
collaborative work, such as those used for writing academic papers and research, communicating with students, post or pre conference collation of input and ideas etc.

- Blogs
- Free internet telephony (e.g. Skype¹¹)
- Instant messaging accessed by web-based services such as Meebo¹² and Trillian¹³
- Social personal web sites (e.g. Myspace¹⁴, YouTube¹⁵, Gather¹⁶ and Bebo¹⁷)
- Collaborative working tools for shared text production (e.g. Google Writely¹⁸ and ThinkFree¹⁹)
- Bookmarking and tagging (e.g. del.icio.us²⁰)
- Sites facilitating text and image sharing (such as Flickr²¹, Tabblo²², Our Story²³ & SlideShare²⁴)
- RSS feeds for directing / receiving focused information
- Mash-ups (website or web application using content from more than one source to create a completely new or an improved service, such as RSS feeds for supplying content).

4. Overview of IPR

Intellectual Property Rights (IPR) are a set of rights protecting the fruits of creativity, invention, endeavour and innovation. In the case of Web2.0 activities, they are likely to include the following, to a greater or lesser degree:

¹¹ <http://www.skype.com>
¹² <http://www.meebo.com>
¹³ <http://www.trilliananywhere.com>
¹⁴ <http://www.myspace.com>
¹⁵ <http://www.youtube.com>
¹⁶ <http://www.gather.com>
¹⁷ <http://www.bebo.com>
¹⁸ <http://www.doc.google.com>
¹⁹ <http://www.thinkfree.com>
²⁰ <http://del.icio.us/>
²¹ <http://www.flickr.com>
²² <http://www.tabblo.com>
²³ <http://www.ourstory.com>
²⁴ www.slideshare.net



Intellectual Property Rights fall into two clear categories:

- **Monopoly rights:** Whereby the owner of any Design Rights, Trademarks and Patents can prevent the use of such a design, mark or invention even if it was thought of independently subsequent to the registration of the former. These will require registration.
- **Non-monopoly rights:** Whereby the establishment of such a right – including Copyright, Performers Rights and Database Rights – is automatic, and anyone else can create a similar work as long as they invest effort and the work is not created by copying.

Works protected by copyright are likely to be the most commonly encountered IPR issue within a Web2.0 environment, because of the vast range of creative works that copyright protects, the length of its duration, as well as the automatic protection upon the creation of a work, subject to the fulfilment of certain criteria. This means that most material that is created, shared and disseminated is likely to be protected by copyright and the rights holders (of whom there may be many), retain the exclusive rights to control copying (or not) of their works, as well as retaining the right to control a number of other restricted acts in association with their works. These restricted acts which the rights holders retain the exclusive right to carry out include:

- Copying
- Broadcasting
- Making the works available to the public
- Performing
- Dissemination
- Issuing copies to the public

Copyright protects the following range of material which will have both print and digital equivalents:

- Artistic works, such as digital images (both “born digital” and “digital surrogates”)
- Literary works, such as text forming part of a submission to a wiki or blog, the content of databases and computer programmes, titles of webpages and hypertext links, RSS feeds.
- Sound recordings, for example, recordings of performances which are podcast or placed on sites such as MySpace or YouTube
- Broadcasts, such as internet transmissions, as long as the time of viewing is determined and controlled by the person (organisation) making the transmission
- Films, which would include moving images recorded in electronic form
- Dramatic works
- Typographic works, such as the layout of a webpage

- Music, which would include uploaded or downloaded music both digitally born and/or digital copies.

It is important to point that copyright will only protect the material expression of an idea, rather than the idea itself, so whilst ideas for creative works will not be protected by copyright (but possibly some other right), their tangible form will be. This is an important distinction and means that, for example, ideas for new creative works will not be protected, unless they are written down. Even then, the protection will only extend to the form of the words used (protected as Literary works, rather than the inherent concept).

It is also worth noting that software in the UK cannot be patented as such (though patents are granted for technical processes that happen to incorporate software), but are always protected by copyright, also as Literary works.

5. IPR challenges and Web2.0 technologies

Web2.0 can fundamentally challenge the international legal framework, which can be exemplified by the plethora of rights issues for HEIs and FEIs associated with Web2.0, which overlap with other laws (Human Rights Act, Data Protection; Breach of contract; obscenity; liability and defamation). These can be broadly summarised within the categories as recommended by the TechWatch report²⁵.

*For example: The video-sharing website YouTube, was blocked on 7 March 2007 by a court order in Turkey, after some videos insulting Turkey's founding father, Mustafa Kemal Ataturk had been uploaded on its servers. The ban was lifted two days later, when the videos were removed from the website. Some of the videos, considered offensive by the court, insulted the Turkish flag and Ataturk's portrait.*²⁶

One of the challenges to overcome is also the perception of the IPR status of digital content. On the one hand is the very real misunderstanding that Web2.0 creates communities of users, whose *modus operandus* is one of sharing and anti-copyright and one which is **not** subject to the same legal framework, as for example, joint collaborations in the “real world” like those between John Lennon and Paul McCartney resulting in copyright-protected music and lyrics. This is a quite a serious cultural barrier. Additionally, digital is perceived as somehow different. In terms of copyright digital is no different – it is just easier to infringe. This point is nicely captured by the IP Rights Policy within the Second Life website²⁷ which states that:

“Linden Lab's Terms of Service agreement recognizes Residents' right to retain full intellectual property protection for the digital content they create in Second Life, including avatar characters, clothing, scripts, textures, objects and designs. This right is enforceable and applicable both in-world and offline, both for non-profit and commercial ventures. You create it, you own it – and it's yours to do with as you please.”

The next sections put the severity of the perception of Web2.0 and IPR into context by scoping the range of IPR issues that are likely to be present in three different uses of Web2.0 technologies and services, which are likely to be of interest to JISC and JISC funded projects.

5.1 Deployment of existing Web2.0 technologies & creation of new technologies

²⁵ <http://www.jisc.ac.uk/media/documents/techwatch/tsw0701bword.doc>

²⁶ http://www.rsf.org/article.php3?id_article=21256

²⁷ http://secondlife.com/whatis/ip_rights.php

This section refers to likely IPR issues resulting from the deployment of existing Web2.0 technologies (or parts thereof) and/or the creation of new Web2.0 technologies within HEIs and FEIs. These might also include using mobile technologies to enhance learning experiences. Many existing Web2.0 sites, services and technologies are likely to be protected themselves by a range of IPR, and it is important to be able to identify what these may be in order to avoid possible infringements. It is also important to understand what IPR issues are likely to arise in the creation of new technologies to ensure that appropriate strategies are put in place to create a framework in which activities can be carried out in as risk-free an environment as possible.

Trademarks: Some Web2.0 services, such as “MySpace “Flickr” and “YouTube”, are often themselves registered trademarks. This is often indicated by the TM or ® symbols, but this is not done invariably, and their absence does not mean the term is not subject to a Registered Trade Mark. Whilst trademarks can be used in general texts describing them (as in the use of the names, above, for the purposes of this paper), it is an infringement and subject to civil and/or criminal remedies if the names of these services were, for example, to be used in association with another similar product of service (the legal term is “in the course of trade”).

For example A JISC Programme Manager could legitimately refer to a trademark within a report as could a JISC funded project, whose outputs are accessible on the web, legitimately references the name of a pre-existing Web2.0 service (as in the paragraph above). However, the JISC funded project would likely to be in breach of the use of the trademark, if for example, the project were to take the name of the Web2.0 service. As trademarks are monopoly rights, the JISC funded project would also need to be mindful in not using trademarks which might pre-exist even if the JISC funded project had thought of the name independently.

Furthermore, depending upon the extent of protection, the registration may also cover goods and services beyond the web. Names of companies and other organisations are protected by rules very similar to those of trade marks. This is also a real issue for websites such as Second Life, whose virtual worlds parallel the real, which have tried to resolve the issue of preventing Trademark Infringements by users, (and subsequently reducing their own risk of secondary infringement) by including comprehensive trademark and other IP policies²⁸.

Domain names: domain names are assigned by various national bodies. The use of a domain name to simply indicate a web address is always acceptable, but the use of a confusingly similar name in order to take business away from the original web site is often the subject of Court cases; typically, the older-established domain name will win over a newer one.

Patents: Software and other technologies driving Web2.0 may be patented in countries outside the UK. In particular, the USA is famously friendly towards software patents. It is therefore important when making, using selling or marketing software in the USA to ensure that the software in question does not infringe any US patents. In this respect, code protected by patents, cannot be used or shared in the USA without prior authorisation. Like trademarks, infringements of patents can be carried out unknowingly. The law is clear that even such innocent infringement still attracts penalties. So it is important to ensure that appropriate checks are carried out before software that might be the subject of a patent, or a trademark is used.

²⁸ <http://secondlife.com/corporate/trademark/>

Copyright: Computer code, irrespective of whether it is the subject of a patent, will always automatically be protected by copyright world-wide, assuming it has not been copied from someone else's code. So whilst it is implicit within the use of Open Source software to create a collaborative framework for sharing code, the use of the code still requires adherence to the relevant licence which underpins its use. Because of the broad range of works that copyright protects, there is also likely to be copyright protection (and possibly also trade mark protection) for any signs and symbols, art work, layout, logos, images and text which form part of infrastructure of each respective Web2.0 site, service and technology.

Database Rights: A database is defined in law as any collection of data, text, etc. Many databases are protected by so-called database right in EU member states. This right is afforded automatically if there has been substantial investment in verifying, obtaining (i.e., gathering) or presenting the contents of a database, as long as one or more of its makers is resident in the EEA or a body operating in an EEA state. (EEA = European Economic Area, i.e., the European Union plus a couple of other West European countries). This right prohibits extraction or re-utilization of a substantial part of the database (in terms of both quantity and quality), unless a licence has been sought or unless it is for illustration within teaching, or research purposes which are non-commercial. In all such cases, the source must be indicated. Database rights may be present within sites and services which collate and display User-Generated content or other data, and it would be infringement of this right (and perhaps also copyright – see above) if this material were reused within another service or system without licence from the rights owner.

Performers' Rights: Performers have the right to authorise, or to prevent, copies being made of their performances. Performances include acting, singing, playing musical instruments, dancing, and public speaking. They may include other activities, e.g., playing sports and games as well. Any copying of such activities requires the explicit permission of the performer, or an organisation representing the performer. In UK law, performers rights typically last 50 years from the date of the performance. These rights will protect an individual's performance within Web2.0 technologies such as podcasts. So, it will be important to recognise that these issues exist, in order to harness appropriate strategies to deal with them.

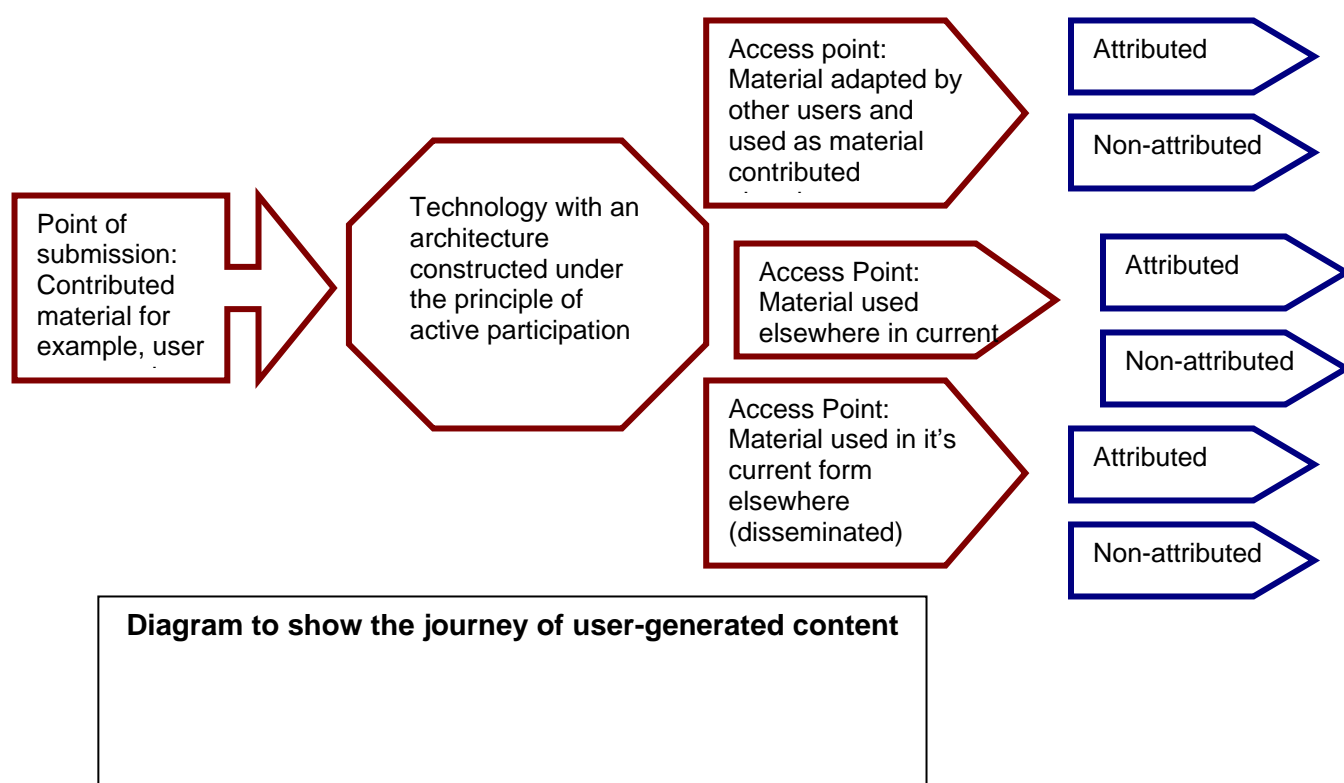
For example: At a JISC Conference, speakers are recorded in order to upload the presentations on the JISC website and YouTube and to podcast the presentations in order to make them accessible to a wider audience. Although some of the presentations will be those by JISC staff, so as employees, JISC will own their rights, explicit written agreement for the reproduction of performances from all non-JISC staff will need to be obtained in order ensure that their Performers' Rights are not breached..

Since many rights can exist simultaneously, in addition to the rights above, if JISC were to record presentations (as above), it should be noted that the following will also need to be resolved:

- Data Protection: The recording should not show the audience unless their agreement has been for Data Protection reasons
- Copyright: Any images and text etc must be cleared if they belong to third parties
- The use of Registered Trade Marks, or confidential information (in a case study, say) in the presentation needs to be cleared as well with owners
- There will be a requirement to ensure that there is nothing illegal, e.g., pornographic, defamatory, present in the lecture

5.2 Use of existing Web2.0 technologies

This section refers to the use of existing Web2.0 technologies to assist teaching, learning and research activities within HEIs and FEIs. Many Web2.0 services, systems and other technologies which encourage collaboration and therefore operate upon the basic premise that material will be inputted and then accessed as below. In this case, user generated material flows through the system and can then be reused, repurposed and adapted, typically in accordance with the terms under which the material was initially submitted, and at the point of access. .



IPR and licensing issues which are likely to arise include:

- If material is repurposed, (in the absence of a suitable licence agreement), permission will need to be sought from ALL the contributors of the material before such repurposing is carried out. It will be best to get such permission at the time that material is posted i.e., make it a condition of submission that the person posting agrees to possible repurposing. In this case, the wording of such condition of submission needs legal advice. To make matters more complicated, there may be an argument that by posting materials, people posting are giving an implied licence to repurpose.
- The terms under which material is submitted will decide the terms under which users can subsequently engage with the material, otherwise the service could be facilitating infringements of copyright and thus, in breach of secondary infringement of copyright.

- Third party content (for which rights still reside) cannot be submitted to a shared forum unless permission has been obtained. There are a number of exceptions to copyright, such as “fair dealing”, but it is unlikely that any of these would apply in such cases. In order to reduce these risks, many contributory websites, such as YouTube will include copyright infringement notifications statements which will remind the users about their responsibilities to clear third party rights and notice and take down procedures²⁹.
- There may be issues of liability of the service provider; in particular, the provider may be liable for illegal content (e.g., defamatory or pornographic materials) or for providing access to material which might be still in copyright and posted without authorisation (as above). This raises issues regarding how much policing of the material should be undertaken by the service provider, as well as issues relating to risks. The potential liability issues raised are similar to those for an electronic publisher, or the owner of a repository.

Moral Rights: in UK law, the main Moral Rights are the right to be identified as the creator (the so-called paternity right, which must be asserted in writing), and the right to object to derogatory treatment of one’s work, e.g., being quoted out of context or having materials amended in such a way to impugn one’s reputation. It is very important that third parties and service providers respect these Moral Rights, as failure to do so could lead to legal action resulting in damages.

For example: Material submitted to a wiki, should not be edited, unless permission has been sought in advance from the contributor, or alternatively they are asked to waive their moral right to object to derogatory treatment. NB: Moral Rights cannot be assigned or given away, only waived.

Performers Rights: Like podcasts, depending upon the types of material, these maybe real issues that need to be identified and dealt with appropriately.

Trademarks: the use of logos and other trade marks should only be carried out with the express approval of the owner.

5.3 Use of User-Generated Content

This section refers to the possible reuse of User-Generated Content uploaded onto Web2.0 websites, such as Flickr, Bebo and MySpace. Third party rights contained within pre-existing material may include one or more of the rights outlined above. As noted earlier, there are three issues:

Issue One: The first relates to newly created content, such as “born digital” material; in such cases, the copyright in such content is likely to belong to whoever submitted it. Permission should be sought for reuse unless the terms of submission have given the necessary authorisation or an implied licence can be inferred.

Issue Two: The second is the risk of use of third party IPR, including copyright, patents or trademarks, in the material submitted. There is a real risk that if material is used for purposes for which rights have not been cleared, the service provider and/or users could be sued for infringing these rights.

²⁹ http://www.youtube.com/t/dmca_policy

For example, a born digital piece of content which includes a trademark, may be prove problematic. In a globally accessible Web2.0 environment, the use of trademarks, for example, incorporated within digital content, may present real risks of both trademarks and copyright infringement without authorisation, as the trademark itself may be a copyright-protected work beyond the rights inferred on to as a registered trademark!

Issue Three: The final risk is of illegal content being posted. The service provider will be liable if it can be shown that it knew, or had good reason to know, that illegal materials, including viruses, spam, defamatory materials or pornographic materials, were being posted. Therefore, a robust and efficient notice and take down procedure is required, though any service provider is entitled to make a careful (but urgent) examination of the facts if a complaint is made to it, before taking the material down.

6. Ownership of rights

The ownership of rights in Web2.0 generated material is a grey area, which is largely due to the following issues:

1. User misunderstandings

Although copyright protection is automatic upon the creation of a qualifying work, many users of Web2.0 technologies and services are not aware of this and mistakenly believe that because of the ability to create, share and adapt material, the Internet contains vast amounts of Public Domain material that can be freely accessed and used. This means that some users will use works created by others and pass these off as their own. Alternatively, they may be unaware of the complexity of rights issues within any one piece of material; for example, if they take a photograph of an art work still in copyright, although they would quite rightly own the rights in the photograph, the art work itself would still be in copyright and permission would need to be sought prior to material being posted, for example, on Flickr.

2. Originality

Originality (i.e., a work is sufficiently original and not just a mere copy of an existing work) is an important criteria for copyright protection. However, just how far one work inspired by another is treated as an original artwork for it to be afforded a fresh copyright, is difficult to assess, other than by reference to case by case examples. So, whilst new technology facilitates the creation, sharing and adaptation of material, it may be hard to ascertain if a work is sufficiently original for it to be afforded copyright protection. If the work is not original (and deemed to be just a mere slavish copy) then the originator of the work providing the inspiration would be the first owner of copyright. In some cases, such as standard computer code and facts, the material itself may be so generic as not to be considered at all for copyright protection. Case law is sparse in this area and differences between jurisdictions will also add to the complexities surrounding this issue.

3. Multiple creators

As a result of encouraging engagement and building communities, it is a likely outcome, indeed one of the motivating factors, that works generated will be the result of collaboration between many different users, most of whom will not know each other and almost certainly be based in a multitude of jurisdictions. The principle in UK law is clear – a work is jointly authored (and therefore the copyright is jointly owned) if it is a work produced by the collaboration of two or more authors in which the contribution of each author is not distinct

from that of the others. This gives rise to two possibilities. The first is that it is clear, e.g., from a conversation thread, that person A contributed X and person B contributed Y. In such cases, copyright in X is owned by A and in Y by B. The second possibility is that there is such interleaving of materials by A and B that it is impossible to clearly state what A contributed and what B contributed. In such cases, then the entire material (X+Y) is jointly owned by A and B. (Of course this can be extended further to as many authors as one likes). This is important, for if a third party then wishes to use the combined materials which are indeed jointly authored, then, as the materials are jointly owned by A and B, both A and B must give their permission for reuse. Permission from just one of them is insufficient.

4. Multiple rights

As indicated above, many digital outputs, such as podcasts, will include a number of overlapping rights. These can sometimes be difficult to determine and thus result in lack of clarity with regards to ownership.

5. Lack of copyright ownership of ideas

There is no copyright protection for ideas. So, whilst the written manifestation of an idea is likely to be protected by copyright, the idea which it describes will not. Of course ideas, which result in a technique of manufactured item can be protected by registration as Patents. However, there are specific criteria for Patent registration, and creative ideas (such as the idea for a story-line for a book, or the idea for a film) are unlikely to be protected by copyright or indeed any other rights.

6. Orphan works

In a Web2.0 environment where potentially anyone can be a creator, there is a whole body of works, which have been created and will be created (both born digital and digital surrogates) without any associated information pertaining to their authorship and/or lacking information about rights holders. This is exacerbated by the ease in which material can be copied and created, by the lack of appropriate metadata or other methods of identifying creators, as well as often the remote relationship between the user of, for example, a digital image and the original image which provided the scan. This is an issue of growing concern on both sides of the Atlantic, and it is likely that in due course the law will be changed to ease the burdens on people wishing to use orphan works.

7. Possible solutions

As indicated above, there are a broad range of IPR issues which present significant risks and need careful consideration prior to the deployment and use of Web2.0 technology and/or the engagement with user-generated content. It is relevant to remember that within a Web2.0 environment, HEIs and FEIs will be in the position of both users of others' IPR and also generators of their own valuable IPR. These IPR issues, if not identified and dealt with accordingly, can present projects, their host institution, JISC and HEIs and FEIs with sizeable risks, in terms of compliance with third party rights and also the possibility of reducing their own ability to maximise and exploit their own IPR. However, there are a number of possible solutions that can be employed to help reduce possible risks and at the same time,

encourage the growth of communities of users who can continue to employ Web2.0 technologies and services within a legally compliant environment.

7.1 Use of licences

7.1.1 Use of Creative Commons licences

It might be thought that the use of Creative Commons³⁰ (CC) licences a suitable solution for some the issues raised in this report. CC has the great advantage of being well-known, easy to understand and widely understood in the Internet world. However, CC is not a panacea. It does not cover rights other than copyright (e.g., database right, trademarks), and the enforceability of CC licences in UK law is uncertain and is as yet untested by the Courts. Even if CC licences were used, they do not cover other issues covered, e.g., the risk of third party rights being infringed, or of illegal content being disseminated. Overall, at best, CC can only provide a partial solution. Other legal risks need to be covered by means of submission conditions, further licences to cover IPR other than copyright, notice and take down procedures and a careful watch to ensure that patents and trade marks are not inadvertently being infringed. In one regard, existing approaches adopted by the Open Source community and in CC is valid – the need to ensure that any conditions imposed on those who submit are also imposed on those who reuse the materials.

7.1.2 Use of other licences

CC licence are not the only option, so whilst projects may consider a CC licence, or other licences within the family of “common” licences, whatever licences are used will still need to be fit for purpose. Since contract law over-rides copyright law, licences can be a useful mechanism for either permitting users more rights than the copyright law would normally grant them, or alternatively creating a situation where users might be more restricted. Licences are also useful for providing a means for users who contribute to a Web2.0 service, to warrant that they are the rights holders, and if necessary provide suitable indemnities for coverage against loss, damage, etc., if they are not.

7.2 Educating users

At the moment, there is great enthusiasm for Web 2.0, but little understanding of the legal risks involved. JISC can play its part by helping to create a framework to encourage sharing and collaboration, whilst rights holders retain their rights, grant a non-exclusive licence to the service and subsequent users and understand the legal risks involved.

The tools that can be employed to resolve some of the issues include the availability of:

- Standard terms and conditions which facilitate the development of community within a sharing framework, but at the same time ensure that material is created shared and further disseminated
- Use of contracts
- Limitation of liability statements
- Guidelines which describe the key rights issues

7.3 Understanding the nature of the rights

Legal compliance can only be fulfilled by understanding the nature of the rights issues that exist within material which is generated and used within a Web2.0 environment. An IPR audit, is also important because there may be more than one rights issue in any piece of

³⁰ <http://www.creativecommons.org>

content and therefore their identification will facilitate the development of appropriate strategies to deal with them. This recognition of each separate right is also crucial because different IP rights have different characteristics, the adherence to which require different responses by users and those who wish to either reuse or copy a work.

7.4 Technological solutions

Whilst Web2.0 technologies open up some IPR issues, so new technology can also provide some of the solutions. Areas providing possible solutions include the possibility of using Digital Rights Management systems to identify ownership and/or control access to certain types of systems and technologies, password protected access to certain types of sites as well as standardization of metadata to capture ownership information and thereby restrict the growth of material that falls within the category of orphan works. This is an area that would benefit for further scoping.

7.5 Planning and strategy

Rights planning and budgeting is an important aspect of any project management and should include timeframes, how to create a legally compliant framework in which activities will be taking place, what are the risks, development of strategies for rights clearance and how attempts to clear rights might be documented. It is also important to consider resource implications for such planning, including staff time.

7.6 Deployment of institutional IPR policies

Staff and students should be made aware of their responsibilities regarding the use of Web2.0 technologies and services. Such awareness is important to ensure that they neither post material for which they do not own the rights (which might, in fact be owned by the institution itself) nor breach confidentiality of their institution by sharing with others sensitive information. The deployment of IPR policies, backed by staff training and appropriate procedures are possible solutions. In particular, it is important to make staff and students aware that although it is extremely easy now to share digital information, this information, like its print equivalent is still subject to both a legal framework, and institutional codes of conduct and policies.

7.7 Risk management & damage limitation strategies

Risk management is an important tool for dealing with the IPR issues associated with Web2.0. Clearly, the risk is magnified if the rights that have been identified are the so-called monopoly rights such as Patent and Trademarks. There is a need to develop a risk management model that takes into account the most common forms of risk, and recommends simple solutions to minimise those risks.

Notice and take down notices are useful tools because it can be difficult to ascertain who might own the rights in, for example, user generated content. This should be complemented by insurance cover to off-set any possible claims that might be made. In addition, money should be put to one-side in case rights holders come forward to complain about the unauthorised use of their materials, alleged defamation, etc.

Interestingly, in a recent briefing document by UKOLN on Web2.0 and Risk management³¹, IPR and legal issues were not identified as possible risks, although other technological and user-related issues were flagged and explored.

³¹ <http://ukwebfocus.wordpress.com/2006/11/17/risk-assessment-for-use-of-third-party-web-20-services/>

8. Recommendations and future actions

In order to address some of the issues flagged within this report, we recommend that JISC considers the following actions:

1. Development of IPR related training, resources and guidance to support JISC Programme Managers and for use primarily by JISC funded projects, but also by HEIs and FEIs wishing to develop Web2.0 services. These will include template terms and conditions for the submission and subsequent use and reuse of material; policies relating to the use of trademarks, copyright and other types of third party generated IP; licences to reuse material; limitation of liability statements for the service providers, guidelines, notice and takedown notice procedures and associated documentation.
2. A requirement that all projects involving Web2.0 technologies and/or services using user-generated content assess the risks of infringement of any IPR and employ suitable strategies for mitigating those risks.
3. Working with UKOLN and other JISC funded services to ensure that IPR and licensing issues are treated as significant risks and appropriate mitigation strategies are employed.
4. Creation of flow charts and diagrams to support JISC projects in their understanding of IPR, licensing and Web2.0 issues associated with their projects.
5. Undertake a full scale study into IPR issues and Web2.0 which can examine in the depth the issues flagged within this report and develop case studies and possible tools for the community that could be used to limit any risks (see above).
6. Undertake a study examining the use of new technology to manage and reduce IPR risks associated with the use of Web2.0 technologies and services. This might build upon work by the TRUSTDR³² project and include how far Digital Rights Management systems offer possible solutions and other evolving technologies which might be used to address some of the IPR and licensing issues flagged within this report. This work might also look at the development of metadata standards for creating new works.
7. Undertake a study to examine the applicability of Creative Commons licences and similar licences to the Web 2.0 environment

³² <http://trustdr.ulster.ac.uk/>