

Web 2.0 and Intellectual Property Rights

Briefing Paper

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What is Web 2.0?

While there is no agreed definition for Web 2.0, most people use the term to cover the use of applications that involve web pages and which involve the networking and sharing of information, including data, text, images, moving images, or sound recordings. In other words, it refers to users generating and distributing content, often with freedom to share and re-use.

Traditional websites limit visitors to viewing only and can be modified by the site owner only. Web 2.0 refers to a range of applications on the web, including so called 'next generation technologies' such as blogs, social bookmarking services, wikis, podcasts, RSS feeds and social software which all provide enhancements over read-only websites. Web 2.0 websites allow users to build on the interactive facilities of 'Web 1.0' and run software applications entirely through a browser.

The potential uses of Web 2.0 in further (FE) and higher education (HE) are just now starting to be explored and the possibilities of using these technologies (already familiar to many students) to deliver teaching materials and enhance interaction between FE/HE teachers and administrators and their students are numerous. JISC is active in exploring a broad range of uses of next generation technologies within FE/HE, particularly under its Users and Innovation, e-Learning and Repositories and Preservation programmes.

What is Intellectual Property?

The term Intellectual Property (IP) covers a range of legal protections for creations of the human mind. IP provides an incentive for innovation because the owner of the rights can exploit and retain these rights to gain commercial remuneration from third parties who wish to use their work. Higher and further education establishments will be users of third party materials subject to IP, but also potentially generators and owners of their own IP, and this will extend to their use of next generation technologies, virtual environments (such as Second Life) as well as digital content and technology. The use of third party IP without authorisation entitles the rights holder to sue for damages and under some circumstances can lead to the destruction of the offending item(s). In certain extreme circumstances, usually where the infringement is carried out in the course of a business, infringement of IP is a criminal act punishable by fines and/or prison.

Intellectual Property Rights Issues Raised by the Web

The internet is not lawless and the laws relating to IP apply to the web. This is because everyone using the internet is a real person living in a country, and all computers are in defined places and

Use of virtual worlds to encourage students to participate in learning activities

The virtual environment can be a more permissive one, with open communities engaged in learning activities co-existing with business models. However, as in the real world, rights issues need to be identified and managed.

Second Life typifies rights issues that arise within the use of the internet per se and in particular the cross applicability and relevance of specific jurisdictions. Copyright issues can range from copies of real life works being created within Second Life without authorisation, to the use of software that makes it easy to copy in-game artifacts. Whilst some virtual worlds claim ownership and control of anything created in the game, Second Life acknowledges that players have copyright in their creations: for instance, players can sell (or refuse to sell) their in-game 'tchotchkes'. Any creation on Second Life is subject to Second Life's Terms of Service which include perpetual licences to Linden Lab and users of the service.

In the case of student created work, as in the real world, permission would need to be sought prior to the use of any content.

subject to local laws. However, although the law in principle applies to varied and multiple sets of transactions, the practical problems of identifying the perpetrator and deciding which country's laws apply are enormous. Furthermore, the laws of each country concerning transactions may well differ significantly. Because of the ease with which materials can be copied and re-disseminated, and because of the difficulty of policing activity and establishing what country's laws apply, the web poses major IP rights issues for FE and HE. It is important that these are understood so that pitfalls can be avoided and opportunities explored.

Patents

Patents prevent any third party from making, using, selling or importing an invention without the permission of the patent owner for the duration that the patent is in force. Patents have to be applied for and are costly to obtain and then maintain. Their maximum lifetime is 20 years from the date from when the patent was first applied. Patents can be registered for software and technological processes created outside the EU and the UK, although their applicability will extend to the UK. Within a Web 2.0 environment it is important to ensure that patents are not inadvertently infringed by use of proprietary software developed by third parties without authorisation, or by developing new software for which a patent may be pending or granted.

Use of mobile phones to download and create course assessment modules

This type of mobile usage could involve the deployment and adaptation of open source software, proprietary software or compliance with licensing terms. It will be important to identify content types, and who has created them, in order to understand the various layers of rights and secure the required permissions from third parties. Content may include pre-licensed content (such as that licensed under Creative Commons licences), and the use of third party content for which permissions will need to be sought, such as that generated by publishers, artists, designers or performers, as well as performers' rights regarding lecturing and possible patents/ trade mark implications associated with the use of third party software. Development work on the project could be carried out by staff, freelance software developers, other contractors and research students; contracts need to be in place with all non-staff to ensure reuse of any content, and consortium agreements if work is carried out by more than one institution.

Copyright

Within a digital environment, copyright is the most frequently encountered type of IP right. Copyright protects the skill and effort expended in creating something new, and protects print and digital content including text, still and moving images, websites, music, broadcasts, sound recordings, software and databases. The duration of copyright in content will vary according to a number of factors such as what it is, when it was created and if it has been published. Unlike patents, copyright is granted automatically and does not involve an application process. There are also some limited exceptions allowing third parties to copy, adapt and disseminate copyright materials under certain controlled circumstances, eg, for non-commercial research or private study.

Trade Marks

These fall into two types – registered and unregistered. Trade marks are typically a symbol, image or word associated with particular goods or services provided by the owner. Both types of mark can last indefinitely so long as the owner still actively uses them and, in the case of a registered trade mark, the fees are paid. The owner of a registered trade mark has the right to take legal action to prevent third parties from using its mark (or something deceptively similar) in the course of trade. The risk that large corporations, seeing considerable business potential in Web 2.0 applications, apply for and obtain patents and registered trade marks could prevent otherwise bona fide activities. (For example, a US company allegedly has applied for a registered trade mark for the phrase 'Web 2.0'.)

Design Rights

Design rights protect the form, rather than the function of an object. Different requirements must be met in order to register a design. However, since amendments to comply with a recent European Directive, the definition of designs that can be registered is broader than previously: some spare parts may be registered if they are 'complex products', provided they are visible in use (eg, hub caps, car doors). Registered design right subsists for five years from the date of application (which is deemed to be the date of registration if registration is granted), and may be extended for up to five periods of five years.

Computer icons, trading names and project names, software fonts, software-related peripherals such as dongles, and on screen displays are eligible for registered design protection as well as possible trade mark protection.

Database Right

The database right is in addition to the underlying copyright which might subsist. A database is defined as 'a collection of independent works, data or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means'. Examples of databases relevant to the deployment of Web 2.0 technologies would include: a collection of audio recordings; a collection of digital stories; content in an institutional repository; a collection of social bookmarking tools; or a collection of educational materials. A database would also include metadata created by the compiler of a database with a view to adding or subtracting files and datasets where they relate to the structure and arrangement of the data in a database.

Performers' Rights

Performers' rights issues may arise in any type of performance (theatrical, musical, oral, dance or even simply a lecture). In these cases, it is important that permission from individuals is sought if a performance is reproduced in whole or in part in a Web 2.0 application, such as a podcast etc.

Key IP Issues and Web 2.0

Within a Web 2.0 environment, in which anyone is potentially a creator and publisher of content, there are a number of IP issues which might arise:

- The collaborative nature of Web 2.0, and the likelihood of international multiple contributors who have never met, has resulted in the shifting of risks, blurring of who owns copyright, who is responsible for dealing with infringements within different legal jurisdictions and/or the identity of collaborators
- Consequential difficulties arise in policing and enforcing any infringements that might occur and establishing who is liable for what and when. Liability could shift from one minute to the next, from one person to another
- Uncertainty about what may be permitted under exceptions to copyright, eg, in the field of data and text mining, because of a lack of suitable case law

Other legal issues include the posting of defamatory, race hate, terrorist-encouraging and pornographic materials, identity theft and privacy/data protection.

Ultimately, when working in a Web 2.0 environment, it is important that the legal ramifications are understood so that suitable procedures and policies can be implemented to realise benefits while reducing risk.

This briefing paper is based on a research paper published by the JISC IPR Consultancy, a three year project whose aim is to coordinate and lead on Intellectual Property Rights issues and rights management to support the JISC and its development programmes: www.web2rights.org.uk

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