



Legal Issues for e-Learning Projects

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Introduction

- Considerable funding has been provided for development of e-Learning tools & projects
- But many FE/HE institutions and projects
 - Are not fully aware of the legal issues/risks relating to their work;
 - Have not planned for, and/or made financial provision for tackling those issues/risks;
 - May face:
 - higher costs of implementation than expected
 - losing valuable tool/project/system functionality
 - inability to use tools for particular purposes
 - legal action by staff, students and 3rd parties

Ownership & IPRs in Systems

- Issues to consider:
 - Is the software proprietary or open source?
 - Who owns IPRs e.g. © in the application (or elements of it) – employees, contractors etc?
 - Is there a formal agreement between project partners as to future ownership & licensing of IPRs?
 - Are the agreement's terms appropriate for planned future development & use?

Privacy Issues

- Issues to consider:
 - Are any personal data collection methods and proposed data uses compliant with DPA 1998?
 - Is it clear who the Data Controller(s) (and Data Processor(s)) are, and where any legal obligations for compliance with DP requirements will lie?
 - Are there appropriate formal/informal mechanisms to ensure conformity with DP obligations, e.g. data sharing agreements, data processing agreements, joint data controller agreements, data use protocols?

Access to Personal Data

- Issues to consider:
 - Who will have, or is envisaged as having, access to personal data held in the application?
 - Is access granted to all of a learner's data or to a subset of that data?
 - Who determines the degree of access granted?
 - What safeguards are there to prevent pressure being placed on learners by 3rd parties to grant wider access?
 - What conditions are placed on the use of the data by 3rd parties?
 - Reuse of data, secondary uses of data, time limits on retention etc.
 - How are these conditions monitored/enforced?

Ownership & IPRs in Content

- Issues to consider:
 - Who owns the IPRs in data contained in the application?
 - Course materials created by staff
 - Course materials created by 3rd parties
 - What rights do learners have WRT info in the application?
 - Data about them created by the institution or by 3rd parties
 - Data created by them such as coursework (UG), research output (PG).
 - Data created as part of wider PDP activities

Content Liability

- Issues to consider:
 - If learners are able to grant access to 3rd parties to materials created in e-Learning systems, or to publish their work on the Web (e.g. WebPortfolio):
 - What guidelines are provided to learners about content liability (e.g. defamation, © infringement)?
 - What procedures are there to deal with 3rd party complaints about learner published material?
 - Who is responsible for seeing those procedures are followed?

Accessibility

- Issues to consider:
 - Does the system meet the requirements of learners (and staff) with special needs?
 - Legislative requirements
 - Ethical requirements
 - What are the implications for learners who don't wish to, or can't, use e-Learning systems?

Legal Process for Projects

- The bid stage
 - Part of project risk assessment
 - Bidders should identify legal issues relevant to their project
 - Bidders should indicate how they intend to address those legal issues
 - Allows JISC Programmes to plan for legal support of projects from start
 - Guidance documentation
 - Seminars/workshops
 - Sharing of good practice

Legal Process for Projects

- Start of a project (LLR/ePortfolio)
 - Consortium Agreement
 - Principal actors and term of agreement
 - Obligations of principal actors
 - Administrative framework of consortium
 - IPRs (background and foreground) and exploitation.
 - Liability and warranties
 - Exit strategy
 - Other contractual issues

Legal Process for Projects

- IPRs
 - Consortium Agreement
 - Who brought what to the project?
(background)
 - What will be produced by the project?
(foreground)
 - Other parties' materials? (rights register)
 - Who has rights in the project deliverables?
 - What can be done with the project deliverables?
 - What legal or implied obligations do the consortium and/or the partners have?

Legal Process for Projects

- Data Protection
 - Principal actors
 - Types of personal data processed
 - Purpose of processing (NB notification)
 - Ordinary or Sensitive personal data
 - Schedule 2 & Schedule 3 criteria used
 - Collection points, Collection notices
 - Process for facilitating data subject rights e.g. subject access, withdrawal of consent
 - Administrative framework - agreements, protocols, guidance + project DP outline.

Legal Process for Projects

- Open Source software/Creative Commons content?
 - If OSS, then what licence? Why?
 - Decision will affect the ability to incorporate other parties' code
 - Decision will affect the ability to commercialise software deliverables
 - Decision will affect ability to control future development path of software deliverables
 - If CC, then what licence? Why?
 - Will institutions/academics/administrators readily accept sharing of material?

Planning and Oversight

- Identification of legal issues is useful, careful risk analysis and appropriate action is essential.
 - 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

Endings & Beginnings

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

Current Developments

- Legal Issues Workshop
 - <<http://asp2.wlv.ac.uk/celt/eportfolio/legal/index.htm>>
 - 11 April 2005, Wolverhampton
 - Useful to aid project planning
 - £50 charge for cost recovery.
- JISCmail list <EPORT-Legal>
 - Discussion of legal issues relating to LLR, e-portfolios & other eLearning issues
 - FAQs from the Legal Study will be announced on the list, and made available via the list filestore, for discussion before final release.