

# **EXPLORING LEGAL & ETHICAL ASPECTS OF IPR MANAGEMENT IN E-LEARNING**

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## **ABSTRACT**

This paper discusses various legal and ethical aspects of the management of intellectual property rights in VLEs, via the exploration of two scenarios. The scenarios attempt to highlight 'gray areas' or areas of uncertainty regarding the ownership and management of learning materials developed by lecturers in higher Educational Institutions.

## **1. INTRODUCTION**

The determination of who owns the Intellectual Property of educational materials developed by lecturers in UK higher education institutions is not always clear, especially when different kinds of learning materials are developed. While university policy documents attempt to address such issues, there are always 'gray areas' which created uncertainty for lecturers. The advent of E-learning and Virtual Learning Environments (VLEs) has meant that educational materials are in a digitised form and can be easily shared, accessed and updated. The question of 'ownership of copyright' therefore becomes even more poignant where lecturers have produced digitised materials during their 'contract for service' and wish to retain personal control over such materials. This paper discusses the issue of copyright ownership of materials especially in the context of VLEs. It also looks at ethical aspects of managing IPR in VLEs.

## **2. EXPLORING SCENARIOS**

The following scenarios attempt to highlight various issues regarding ownership of learning materials in VLEs.

### **2.1 Scenario 1**

Joe has been a university lecturer for over 20 years in computer science. He has developed a unique method of teaching computer programming, which he started when he was a secondary school teacher. His method consists of his own programming language and compiler (which executes the programming language) that has been continually developed over time. Joe uses his method for the first few weeks in his classes although it is not part of the official teaching syllabus. Joe has been asked to produce a document to share his teaching method with other staff to enable 'best practice'. Joe however wants to write his own book outlining his teaching method and also market his programming language. He hopes that this will give him some income to contribute towards his retirement. After some pressure from his colleagues Joe writes a summary of his teaching method, which is included in the University's best practice guidelines. The University now wants to use Joe's method and programming language as part of their new e-Learning programme. Joe is not sure who owns copyright in his software and teaching materials, and is afraid that his retirement plan may be lost. However, he decides that overall the benefit to students of allowing his method and programming language to be disseminated more widely outweigh

his concerns over ownership, and that it wouldn't do him any harm in the universities eyes – promotions are coming up, and he could get a substantial raise in salary which would contribute to his retirement plan anyway.

#### Legal Issues

- *Who owns the copyright in the materials relating to Joe's teaching method:? Is it Joe, Joe's previous employers (Secondary school), The University, Others (teachers, students etc)?*
- *What other issues arise?*
- *What advice will you give to Joe?*

#### Ethical issues (Honesty, integrity, coercion)

- *Has anyone deceived anyone?*
- *Has anyone lied?*
- *Has anyone broken a promise?*
- *Has anyone misappropriated something belonging to someone else?*
- *What other ethical issues arise?*

## 2.2 Scenario 2

The VLE of a university consists of a bulletin board where students can ask questions and receive answers from their tutors. Discussions can also be generated between students and tutors. Simon is a lecturer who teaches politics and he has used the bulletin board facility for over 10 years. Over that period of time he has retained all his contributions to the bulletin board on the central server owned by the university. The contributions ranged from: his ideas/opinions of different issues, explanations of concepts/topics, and responses to specific questions/queries. This has given him a rich archive of information into the types of issues that students have and also a historical insight into his own ideas and development as a scholar. Simon is interested in using this data for research and also to publish his own book. The University Dean has heard about Simon's intentions and is concerned that there may be an issue of who owns the intellectual property in the archive

#### Legal Issues

- *Who owns copyright in the contributions posted on the bulletin board?*
- *Can Simon use the data for research intended to be published in his book?*
- *Does Simon need permission to use the data?*
- *What other issues arise?*
- *What advice can you give to Simon?*

#### Ethical Issues

- *What was the understanding between Simon and his employer about intellectual property rights?*
- *Was it a clear understanding?*
- *Has either party been deceitful in any way?*
- *What relevant principles of the BCS code of conduct apply?*
- *What other ethical issues arise?*

## 3. OWNERSHIP OF COPYRIGHT IN UK HIGHER EDUCATIONAL INSTITUTIONS

The Copyright Designs and Patents Act 1988, states that owner of the copyright in a work is the author of the work, i.e. is the person who creates it (Chapter I, section 9). However if the work is made by an employee in the course of his/her employment then copyright exists with the employer (Chapter I, section 11).

All UK Higher Educational Institutions (HEIs) have a uniform policy on intellectual property which is usually in policy documents for staff. As an example, Middlesex University's policy on *Staff Intellectual Property Rights and Revenue* states that the University will retain rights of ownership of all IP if:

- “it was made in the course of the employee’s normal duties such that the IP might reasonably be expected to result from the employee carrying out those normal duties;
- it was made in the course of duties falling outside those normal duties but in the course of duties specially assigned to the employee, such that the IP might reasonably be expected to result from the employee carrying out those specially assigned duties;
- the nature of the employee’s duties and the particular responsibility arising from their nature were, at the time the IP was made, such that the employee had no obligation to act in good faith towards the University; or
- it was made, without special payment or arrangement by the employee, using consumable resources of the University.”

The policy document also states various categories of staff output that the University retains its rights to IP ownership when any one (or more) of the four conditions above apply. These categories are:

- “patentable and non-patentable inventions and related confidential information;
- all work pertaining to the finance and administration of the University;
- computer programs including the source code – software/firmware works - and databases;
- registered and un-registered designs and semi-conductor topographies;
- outcomes of research which have been specifically funded or supported by the University or its public funding partners;
- copyright in learning materials.”

Learning materials are described as:

“validation requirements and course documents, lectures and open distance learning materials, syllabuses, teaching schemes, annual reports, course handbooks, course publicity materials, records and documents developed for examination and assessment purposes, and work specifically commissioned by the University in any format.”

Learning materials do not include “personal teaching aids developed by a lecturer for delivery of class lectures and seminars”. Such personal teaching aids remain the property of the lecturer concerned.

Staff authors are identified as authors of their learning materials unless they do not wish to be identified. Where the University has altered significantly the content of any learning materials authors are given the opportunity to remove their names from such materials.

The University does not preclude use of learning material by staff authors (including publication in paper or electronic format), however, prior permission must be sought from the University before use.

As is the custom and practice of all UK HEIs University copyright of certain materials are waived. Such materials include: journal articles and books; conference proceedings; musical works; sound recordings; dramatic works; artistic works; graphic works; films; broadcasts; and typefaces.

#### **4. ETHICAL THEORY**

The following summaries of two key ethical theories could be used to aid in any assessment of what course of action is the right one. Clearly ethical theories are many and varied, and are complex. The outline that follows is purely for guidance, and included to promote thinking.

Deontological theory (from Emmanuel Kant) is based on the notion of personal duty, and that this is what motivates us ethically. Our sense of ethics comes from our 'will' and that, for rational beings (as we are) we must 'will' that what is right for us as individuals must also be right for others. That is, if we consider

an action right we must recognise that the action would be a right action for others. That is, for our actions to be ethical they must be able to be universalised. For example, it would be logically inconsistent to say that breaking a promise is good – because if everyone broke their promises there would be a loss of trust in promises, and the whole nature of a promise would be lost. Therefore, he says, that certain things cannot be "universalised" (i.e. they would not work if everyone did them), and these things are wrong. Examples are: killing others, lying, stealing, breaking promises. This theory takes an absolutist position in that what we consider to be wrong is wrong in all circumstances - there are no conditions under which it could be right.

A different approach is given by the theory based on consequences (consequentialism). There are many versions of this theory, but one of the most commonly used versions is that an action is good if the consequences are good. Specifically the consequences have to bring the "greatest benefit to the greatest number of people".

Therefore, in relation to issues of IPR the questions that need to be asked are: can actions taken in respect of IPR be (a) universalised (Kant) or (b) which action brings the greatest benefit to the greatest number of people?

## 5. CONCLUSION

The scenarios explored in this paper aimed to highlight some of the 'gray' areas relating to determining ownership of IP in HEIs. While there are legal and regulatory guidelines that aid in determining such issues, it is not always easy to do so. The advent of E-Learning and the digitisation of educational content makes the issues of ownership even more important since such content can be easily archived, distributed, updated and accessed. Lecturers and HEIs need to be clear on IP ownership issues. It is also important that all parties observe high ethical standards when dealing with issues relating to IP. It is hoped that the issues explored in this paper will provide some guidance on legal and ethical aspects of IPR management in the higher education sector.

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