

MANAGING IPR IN A SUCCESSFUL E-LEARNING ENTERPRISE: THE GLOBAL CAMPUS, MIDDLESEX UNIVERSITY, UK

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The Global Campus of Middlesex University delivers blended learning across several countries of the world and now has over 1000 students. This paper analyses the Middlesex University processes for managing the intellectual property aspects of e-learning material associated with the Global Campus. It includes recommendations for other UK universities to consider. The authors acknowledge the support of Intrallect Ltd and the Higher Education Funding Council for England for some of the work which led to this paper.

1. INTRODUCTION

The Global Campus programme was designed to deliver high-quality, blended learning, award-bearing undergraduate and postgraduate programmes in computing across a range of countries with viable populations of students able and willing to take courses delivered in English from a UK institution. The programme is ongoing and more countries are added each year. A small but increasing part of the operation is the use of material in ways beyond award-bearing programmes.

Currently the Global Campus is delivered in Hong Kong, mainland China, Egypt, Singapore and Cyprus, with further countries likely to include Lebanon, Thailand and Vietnam in the near future. It includes the following academic programmes:

- Undergraduate programmes – BSc Business Information Systems
- Postgraduate programmes – MSc Business Information Technology and MSc in Electronic Commerce.

There is also a Foundation certificate in Computing with Business (a one year “access to higher education” programme) which was developed under Global Campus but now runs separately. Since its inception in 1999, more than 1000 students have registered on Global Campus programmes and more than 500 have graduated. In 2003–04 there were approximately 750 students registered. The technology for the Global Campus is constantly evolving. Currently it is based on a range of software technologies including XML and software systems including the commercial product WebCT Vista and home-grown systems developed both in-house and in partnership. Content is sourced from a range of authors including staff on campus and consultants spread across several countries.

Over 30 papers have now been published on Global Campus. For recent information see the Newsletter at http://www.mdx.ac.uk/gc/news/newsletter/gc_newsletter_2.pdf.

The Global Campus is part of a wider range of e-learning developments at Middlesex University including the widespread use of WebCT Vista and a new Centre for Excellence in Teaching and Learning based at the National Centre for Work-Based Learning Partnerships (see <http://www.mdx.ac.uk/www/ncwblp/>).

2. METHODOLOGY

The methodology used for this research comprised documentary analysis of contractual and related files, plus interviews with MU staff and authors contracted to work for Global Campus. It was also useful for comparative purposes that several authors had experience of distance learning in other organisations including the Open University, Sheffield Hallam University, and UK eUniversities Worldwide Limited (UKeU) – some Global Campus programmes were considered for delivery via UKeU. However, the focus of the paper remains the MU Global Campus.

3. INTELLECTUAL PROPERTY OVERVIEW

The top-level IPR arrangements for Global Campus are as follows:

- Global Campus commissions content from authors (internal and external to MU). All copyright and IPR is assigned to MU except where it is explicitly stated otherwise. MU staff doing Global Campus authoring as part of their normal duties come under their normal staff contract of employment; if they work as consultants they fall under the consultant contract.
- Aspects of moral rights are also relevant where content is used in more than one programme and where it is used by other MU staff in other courses.
- There are mechanisms that motivate staff to be involved in e-learning authoring and development, while assuring them that their IPR will not be unreasonably exploited.
- Global Campus also uses some third party IPR and has mechanisms to monitor and manage that process. There are issues of tracking limitation of use and multiple use, detection of IPR infringement and how to reduce the risk of IPR infringement.

Global Campus also commissions software from contractors, and owns the IPR in that if this makes good business sense; but this aspect is outside the scope of this paper.

The degree of influence of intellectual property rights on the Global Campus business models is determined by:

- The amount of investment required to develop the various elements of the learning package: in general the university wishes to own most or all of the IPR but there is some cost for buying or licensing third party material to construct the learning packages in each programme.
- The time required to develop the various elements of each learning package versus the deadline for delivering the programme.

Initially, the Global Campus had a relatively limited amount of funds to invest and a tight deadline for delivering each programme. This led to the decision that MU would only invest in and therefore own the IPR of the online content of the learning package. Other elements (e.g. text books, VLE and other software used for learning) were either bought, used under license, or used with permission.

As the Global Campus began to mature, there was greater interest in owning the IPR of more elements of each learning package. One of the drivers behind this was that owning more IPR would allow the university to exploit commercially various elements of the Global Campus outside the academic programmes.

Note that the topic of database rights has not so far arisen in the Global Campus.

4. THE CONTRACTUAL SITUATION

Currently all authors, both those on the academic staff and those not, work under identical contracts, if they wish to be paid for authoring. There is not a different contract for reviewers – they come under the author contract.

4.1 CONSULTANT AUTHORS

The author contract is between the author as a consultant and MU Ventures Ltd, the trading arm of MU. The contract (MUVL 2004) makes it clear (clause 11) that:

For the consideration mentioned in Clause 8, you, by way of assignment of the present and future copyright, hereby assign with full title guarantee to MU the entire copyright and all other rights of whatsoever nature in and to the e-Learning Package (excluding any licensed material referred to in Clause 10) throughout the world for the full period of copyright and all renewals and extensions thereof. *MU shall have the exclusive right during such period to publish and to license for publication the e-Learning Package in whole or in part in all editions, formats and media in the English language and in any translations without limitation.* [our italics]

This is standard across the sector – and indeed across industry – for consultant contracts – see also the university's Standard Consultancy Agreement (MU 2004b) Clause 9.

The author contract also makes it clear that the IPR must originally be owned by the authors. Clause 9 of that states:

Subject to obtaining the appropriate permissions as provided under Clause 11, you, as Author, warrant to MU that the e-Learning Package is your own original work and is not a violation or infringement of any existing copyright or licence or of any other right of any other party whatsoever. *You undertake to indemnify against any claims, loss, damages or costs, including any legal costs properly incurred, occasioned to MU in consequence of any breach of your warranty hereunder or arising out of any claim alleging that your work constitutes a breach of this Warranty.* [our italics]

In theory, the assignment of IPR to MU prohibits non-Middlesex authors from using the material in their own face to face teaching; in reality, given that most face to face teaching remains private, there is no real way of policing this, even in the UK.

MU staff receive income additional to their regular salaries if they author Global Campus materials, provided that they take leave – at standard allowances – to do the tasks. The rates of pay are the same as those paid to outside contractors. Internal staff must take two days’ annual leave per unit for “Authoring” and/or one day’s annual leave per unit for “Reviewing”.

4.2 STAFF AUTHORS

MU staff also have the option of authoring material as part of their normal workload. In particular, module leaders are expected to update approximately 10% of their module each year without pay as part of their workload. In such cases, staff are subject to their normal contract of employment.

The IP aspects of such work are not covered in the general contractual conditions but in a separate (and public) Policy Statement (MU 2004a) on Staff Intellectual Property Rights & Revenue. Most of page 2 of this is concerned with this topic, nailing down the lid hard on the issue. In particular it notes at the top of page 2 that:

In relation to questions of ownership of intellectual property, the University relies on the Patents Act 1977, the Registered Designs Act 1949 (and, as amended, 1988), database rights regulations, and the Copyright Designs and Patents Act 1988 which state respectively that *ownership vests in the employing organisation* [our italics] in cases where the invention, design, or ‘work’ is made in the course of the employee’s normal duties or might reasonably be expected to result from those duties, or is made as a result of specially assigned duties.

It reiterates later on page 2 that “copyright in learning materials” is covered by this, along with various other categories of work. This provides an unarguable framework.

4.3 FURTHER EXPLOITATION

A related issue is whether the agreement/contract with authors allows a university to exploit material produced via publishers or distributors that may not have been known to the authors or Global Campus at the time of authoring. In the case of MU the situation is clear. In the Global Campus Contract, Section 6.1 clearly states that the client i.e. MU, shall retain all copyrights in the work produced. Also in the document titled Contract for Services (MU 2004c), clause 11 clearly assigns MU:

the entire copyright and all other rights of whatsoever nature in and to the e-Learning Package (excluding any licensed material referred to in Clause 10) throughout the world for the full period of copyright and all renewals and extensions thereof.

The above implies that any material paid for can be exploited by MU in the manner suggested, *regardless* of what the authors were told at the time of authoring. Any attempt by the author to interfere in the way the client (MU) uses/markets the work will not be successful since the author cannot derogate from the grant of copyright (as per the contract).

The above statement should be made with one caveat. Although the authoring assigns copyright to the client, the author will still retain the *moral right* to object to derogatory treatment of his work since this right has *not* been waived in the contracts. Note that derogatory treatment means any treatment which distorts or mutilates the work, or is prejudicial to the honour and reputation of the author. It also means activities that would offend the author, and in the context of Global Campus material this may mean reducing the quality of a work by altering the literary style (e.g. making unreasonable additions or deletions, etc).

5. STAFF VIEWS OF IP ASPECTS

As the issue of intellectual property (IP) is a familiar one in general terms for most academics – being their “stock in trade” – it was felt that their perceptions regarding ownership were relevant to this study.

Consequently, a number of interviews (nine) took place with MU academics who had been asked to author material for their modules, with the aim of establishing their perceptions of intellectual property in regard to Global Campus modules, and the influence of intellectual property issues on their attitude to authoring.

It was decided to undertake semi-structured interviews based on a short questionnaire in order to maintain a focus on the issue of intellectual property, and to gather a rich picture from the responses. The interviews established the following:

- None of the authors interviewed had written all the units for their module.
- Half of those interviewed believed (correctly) that Global Campus owned the intellectual property.
- Half were aware of issues of consent regarding third party intellectual property rights.
- For the majority of authors the issue of intellectual property (either their own, or third party) had no influence on their attitude to authoring.
- Most authors thought the financial recompense for their IP was low.
- Overall responses to author recognition were less strong, but there was confusion as to the extent of author recognition (i.e. previous authors, present authors, future authors).
- Half of the authors indicated that an increase in scope of Global Campus delivery (e.g. from a few countries to say, 20 countries) would influence their attitude to authorship.
- Almost all of the authors were influenced by time and effort constraints.

The overall conclusion from the questionnaires is that the issue of intellectual property is not the major influence on authors' attitude to producing distance learning material: the major influence is instead a combination of the effort involved and corresponding time required to produce quality teaching material. However, the results also indicate a mixed understanding (as authors) of intellectual property ownership. This might have been different if the authors had written entire modules and therefore had more of a stake in the outcomes.

This impression of a lack of personal stake in the authoring is borne out by the response to the question regarding global scope of delivery. Many authors had not given consideration to "mass marketing" of their material, but on reflection said this would influence their approach. It is likely that if there was truly "mass marketing" of material, then authors would want an up-front "fees+royalties" structure – see next.

6. STAFF REWARD ISSUES

There is rather more influence of Intellectual Property Rights on reward models for staff. The public document MU (2004a) contains clear guidance on this matter:

Good practice (as stated by the AUT amongst others) suggests that revenue sharing (from the commercial exploitation of IPRs) may be best achieved via the simple formulae – 'recover the University's direct costs up to a point, then pay the majority of the first net income to the originator – up to a ceiling – so as to provide a motive for active participation in the first stages, then further split the proceeds on a stepped percentage scale, with the employer taking more as the profits accumulate.'

To this end, net revenue shall be distributed according to [agreed percentages].

However, it is understood that in the case of e-learning material, this has not as yet happened.

7. THIRD PARTY IPR

There is a process for handling clearance from publishers etc. This includes a copyright clearance form MU (2000). However, authors are discouraged from using material subject to copyright clearance if it substantially increases the cost of the material (e.g. if there is not an agreement with the publisher in place) and/or the administrative costs of the programme. Copyright clearance does happen, but authors tended not to be aware of the administrative implications of what they ask for.

8. EXPLOITATION OF E-LEARNING CONTENT BEYOND THE ACADEMIC PROGRAMME FOR WHICH IT WAS ORIGINALLY DESIGNED

A number of requests have come in from publishers who were interested in distributing MU material to a wider market, possibly after slight amendment to suit the particular target market. However, so far the financial reward offered by these publishers was (as is common) not particularly high and has so far represented a real disincentive to pursue this form of exploitation further.

Similar requests have come in from Global Campus partners to licence the material to them to copy in their own countries *for their own use*, either for a certain number of copies or for unlimited copies. It has been clear so far that such requests for local printing were motivated by the desire to lower the price per unit. In arriving at a price per unit for a particular number of copies, MU considered the overall cost, reasonable return on investment and quantity required. MU also differentiated between the price for the learning package that included access to the online environment (WebCT) and a package that only relied on CD-ROM and hard copy.

However, for unlimited copies of material, MU has however been unable to arrive at a price for licensing this. The reason is that policing of such arrangements is costly and local legislation is often difficult to clarify. One partner even stated in writing that there was *no copyright law* in that country – this naturally did not inspire confidence in pursuing this arrangement further. MU has allowed one overseas reputable state university (in South Africa) the use of Global Campus electronic material as it appeared on the CD-ROM, but with no access rights to the Global Campus learning environment (WebCT etc). This was only for their students with no rights to future versions. The justification for allowing this was that MU had links with the Computing Science department at this university through a former lecturer at Middlesex, bringing some element of trust to the arrangement.

9. CONCLUSIONS AND RECOMMENDATIONS

This paper provides an analysis of the policy and practice at Middlesex University in terms of IPR for e-learning material. It is written with specific reference to the Global Campus but it is believed that the approach is similar across the University (e.g. all policies and most contracts referenced are University-wide). The recommendations are:

1. Universities should ensure that their ownership of assets, including e-learning assets, created in the course of employment or consultancy are made clear in both contracts of employment and contracts for consultants. In particular, vagueness in drafting, reliance on unstated implications of general law, or a gap between legality and enforcement (in particular, when high-profile staff seem to be exempt from strictures applied to junior staff) are not helpful to furthering e-learning in institutions.
2. In view of the cross-functional team nature of much e-learning development, there should not be gratuitous differences in treatment between academic and non-academic staff when it comes to the IP aspects of the creation of e-learning material.
3. In the interests of being good employers, universities should not infringe on the moral rights of their staff and consultants.
4. In the interests of being good employers, universities should ensure that there are revenue-sharing opportunities for staff when they share in creation of intellectual property – and that these are activated in reality rather than remaining theoretical constructs. This is less necessary for consultants who are usually paid an alleged “market rate” for their efforts.

These recommendations can be taken as statements of best practice and as such should be taken into account in into any benchmarking system for e-learning.

A number of more general guidance documents including from HEFCE and JISC are listed in the References. For the general context of the study that this paper is based on see <http://www.intralllect.com/HEFCE-IPR/>

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