

Business and Community Engagement



Prepare to Engage!

If you provide services to the business or social community, being prepared on the intellectual property issues may help you to avoid any unnecessary conflict and maximise opportunities.

This publication is aimed at UK further and higher education staff working in areas related to knowledge transfer, work based learning, community links, outreach, CPD, employer engagement, wider participation, and lifelong learning.

It is one of a series of publications produced by JISC Legal to raise awareness of the potential legal issues related to the use of technology by colleges and universities in relation to their business and community engagement activities.

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1. BCE and Copyright Law

Colleges and universities have traditionally focused on their core activities of teaching and research. Over the last few years, however, there has been a shift towards supplementing these activities by providing services to the business and social communities. This service provision is known as Business and Community Engagement, which is also referred to as “Third Stream” activity or Knowledge Transfer.

2. Business and Community Engagement (BCE)

BCE involves further and higher education institutions making their knowledge and expertise available to the business and wider social communities. The service provided will depend entirely on the institution in question and the expertise of its particular departments, but typical examples range from commercial research, consultancy and training services, to community education and outreach courses.

3. Intellectual Property Issues

Whilst the range of services is very wide, the one common factor is they all raise various intellectual property issues of which an institution must be aware.

The issue of copyright, in particular, is often overlooked. For instance, who owns copyright in the material which is being used for the activity and to what extent may it be used for commercial purposes? Also, who owns the material which the institution produces in the course of the activity (for example, a report or software)? If these matters are not taken into account and addressed, the institution could find itself in dispute with its customer or project partner, or embroiled in a costly court action with an aggrieved third party, or miss out on valuable exploitation opportunities.

4. Copyright

Copyright is very important because of the amount of material which colleges and universities use, process, produce and publish. Institutions have to be careful not to infringe other people's rights, but also must ensure that third parties do not take unfair advantage of the institution's materials without permission.

Copyright protects original works which are in a material form. This includes literary works (such as a report, article, database or software) and artistic works (for instance, plans, designs and multimedia creations). The protection arises automatically on the creation of the work – so, as soon as you write an article or a report, or create a design, it benefits from copyright protection. This gives the copyright owner a certain degree of exclusivity over that work – only the owner can copy the work, for instance, or issue copies of it to the public.

For more information about copyright generally, you may wish to refer to the JISC Legal publication **Intellectual Property Law Overview**, online at - <http://www.jisclegal.ac.uk/ipr/IntellectualProperty.htm>.

5. Copyright and Engagement

There are two main issues to consider with copyright in the context of BCE activities:-

- (1) Who owns the material which we are using and are we allowed to use it for this activity?**

Ownership

If the institution owns the material, then it will generally be safe to use (subject to any funding restrictions). In some circumstances, however, establishing ownership is easier said than done. Our publication Intellectual Property Law Overview covers this in more detail, but broadly:-

- the person who created the work owns the copyright in it;
- but, where the work is created by an employee in the course of his or her employment, the employer owns the copyright (unless agreed otherwise);
- where the work is produced through collaboration, generally it is owned jointly by the collaborators; and
- if a third party creates work for you (such as software, a website or plans), the third party owns the copyright in the work.

In the context of further and higher education institutions, if a copyright work is created by a member of staff in the course of his/her employment, the institution will own copyright in the work (subject to any agreement to the contrary). For work created by students, copyright will rest with the student unless there are terms and conditions in student contracts (e.g. prospectus) that confer ownership on the institution.

Licensing

The institution may not own the material, but may have a right to use it under licence from a third party (for instance a particular piece of software or access to an online resource base). The main issue here is to establish what the licence allows the institution to do. For instance, it may be confined to use for educational or non-commercial purposes only. So if that material is used to produce research on a commercial basis, this use may fall outwith the scope of the licence and could leave the institution exposed to infringement proceedings.

The licence could be a specific agreement which the institution enters into or could simply be set out on the website or resource which is being used. For example, the JISC Legal website states that -

“A non-exclusive perpetual licence is granted to access, download, print, copy and use, without adaptation, the content available on this website, or parts of it by the UK further education, higher education and specialist college sectors for:

- non-commercial activities; and
- activities related to Business and Community Engagement (“Third Stream”)

This sets out who may use our publications and the activities for which they may be used. You should not assume that, just because something is available on the Internet, you can do what you like with it. The material will generally be

owned by someone and websites will often carry some form of licensing provision governing its use.

Further, be wary of implied licences. These exist where you do not have a formal, written licence describing what you can do with the material in question. Rather, the right to use is implied by the circumstances. As such, implied licences are very vague and confer very limited rights. For example, if the institution commissioned a consultant to develop software for the delivery of a course module (and the rights in the software were not specifically transferred to the institution), the implied licence will generally only extend to its use of the software for that purpose. It could not be used for an entirely new purpose, such as the delivery of that module on a commercial basis (i.e. for professional training or work based learning).

So if you do not have a specific licence which you can refer to, err on the side of caution and either approach the rights holder for confirmation that the use is acceptable, or do not use the material in question. If you do have a specific licence but the intended use falls out with its scope, either contact the rights holder for permission or do not use the material.

(2) Who will own what we produce?

BCE activity will often involve the production of a deliverable, such as a report, software, plans, training materials or designs. Copyright will exist in that deliverable and so it is important to establish at the outset and document who will own the rights. This will be a matter for commercial negotiation and will, to a large extent, depend on each party's input to the project.

For instance, if a research project was funded entirely by a commercial organisation then there may be a general expectation that the organisation would wish the rights to the research findings. The institution has to consider its own input however and the extent to which it may wish to use those findings in the future (i.e. for publication in an academic journal or for further research). Again, the key is to deal with these matters at the outset.

The institution should be wary about contracting on the basis of a purchaser's standard terms and conditions. The terms may be stated on the reverse of a purchaser order or referred to in correspondence. They are usually heavily weighted in the purchaser's favour and may provide that the purchaser owns any intellectual property created in the course of the activity. The danger is that, once the rights have been signed away, they are gone.

Why is this important?

The bottom line is that if these issues are not addressed by the institution, it could result in significant time and money being spent further down the line to try and rectify matters. The worst case scenario is that court proceedings are raised

against the institution, either for infringement of a third party's rights or in relation to a disputed ownership or use issue.

6. Summary

- Institutions must ensure that use of licensed material in relation to BCE activities is permitted according to the licence held. Where the use falls outwith the licence, or there is no licence, copyright will be infringed.
- Institutions should be aware of the uses permitted by the licences they hold – it could be that licences already held for material, databases, software and other tools allow their use in BCE activity.
- At the outset of BCE activity, institutions need to agree with partners as to the ownership and use of copyright material which may be created as part of the collaboration.

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