

Business and Community Engagement



Legal Issues – An Overview

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.

Please note: this guidance has been prepared by **JISC Legal** for information purposes only and is not, nor is intended to be, legal advice. This information is not intended to constitute, and receipt of it does not constitute, a contract for legal advice or the establishment of a solicitor-client relationship.

20 June 2007

Table of Contents

1. Introduction	1
2. Why are legal issues important?	2
3. Intellectual Property Law	2
4. Data Protection Law	3
5. Disability and Accessibility Law	3
6. Freedom of Information Law	4
7. E-commerce Law	5
8. Other Legal Issues Relating to ICT and BCE	5
9. Conclusion	6

1. Introduction

This briefing gives an overview of some of the legal issues which may arise in relation to the use of technology by UK further and higher education establishments in their Business and Community Engagement (“BCE”) activities.

In some areas (for instance, intellectual property law, accessibility duties, and data protection law), JISC Legal has produced more detailed guidance for your reference. Links to this guidance are provided in the relevant sections below.

2. Why are legal issues important?

There are two main reasons. First of all, society is becoming increasingly litigious. If you have infringed someone's intellectual property rights for instance, there is a risk that you could be sued or forced into a settlement. But even if you are not sued, there are other implications. If, for example, your data protection or accessibility practices are not compliant, adverse publicity could be very damaging to your reputation. A carefully developed reputation can quickly be tarnished by bad publicity.

The second reason is one of opportunity. Knowing what intellectual property you have and how to exploit it could act as a revenue stream and will allow you to maximise your engagement with the business and social communities. Also, being compliant is a selling point, not a disadvantage! Commercial partners or customers do not want their provider to create additional risk for them.

3. Intellectual Property Law

Most BCE activities will involve intellectual property to some extent. Where an institution devises and develops inventions, for instance, there could be issues of patent law. If the activity concerns product design, then design rights may be more relevant. The right which is often overlooked, however, is copyright.

Copyright is particularly relevant to BCE activities. It covers and protects a wide range of work including written documents (such as reports, articles, teaching materials and publications) in hard copy and electronic format, software code, a website, artworks, plans and specifications. As the majority of institutions will be producing output of this nature in their BCE activities, an understanding of copyright is essential.

For more information about copyright generally, please see our Intellectual Property Law Overview, <http://www.jisclegal.ac.uk/ipr/IntellectualProperty.htm>.

When providing a BCE activity, there are two key issues to consider:-

- (1) Who owns the material which we are using and are we allowed to use it for this activity?
- (2) Who will own what we produce?

The former issue poses a particular risk. You will have access to a wide range of resources (for instance, software, electronic journals, web based resources, teaching materials and the internet) and may wish to utilise these resources when carrying out BCE activities. These resources, however, may be licensed to you for educational purposes only. If they are used for non-educational purposes (i.e. a commercial activity), this use will be unauthorised and will constitute copyright infringement. Alternatively, there may be no licence in place at all – you may not know who owns the material or may not have acquired a right to use it from the rights holder. Again, if that material is used, it will constitute copyright infringement and could lead to you being

sued. This is likely to be very costly in terms of money and management time, and may well result in adverse publicity.

For more information on these issues, please see the JISC Legal publication **Prepare to Engage** online at - <http://www.jisclegal.ac.uk/bce/publications.html> .

4. Data Protection Law

You will no doubt have a data protection policy in place, supported by appropriate procedures, to reflect the processing which you undertake in teaching, research and administration. BCE activities, however, provide a new processing context and you must ensure that your policies, procedures and practices reflect this. For each activity (or category of activities), you should consider:-

- In what capacity are we acting – controller or processor?
- What data will we be processing and for what purposes?
- Have we provided fair processing information?
- What are our grounds for processing?
- Who are the data subjects and what are our obligations towards them?

If these issues are not considered, you may be in breach of the Data Protection Act 1998.

You should also ensure that your notification covers BCE activities – failure to be properly notified is a criminal offence – and that your subject access procedures recognise the new category of data subject. If you collect personal data through your website, an appropriately worded privacy policy and fair processing notice on the site would be advisable.

For more information on these issues, please see our publication **Data Protection Law and BCE** online at - <http://www.jisclegal.ac.uk/bce/publications.html>.

5. Disability and Accessibility Law

An institution has certain obligations to its employees and students under disability legislation, but these obligations also extend to third parties to whom the institution may provide services. So if you offer health and safety training or art classes to members of the public, you may not discriminate against a person on grounds of his or her disability. You could not, without justification, refuse to provide the service to a disabled person, or offer that service to a lesser standard or on worse terms.

You have an obligation to make reasonable adjustments to the way in which services are provided to disabled people and to the physical features of service premises which may represent a physical barrier to such persons. A failure to do so is unlawful. Adjustments could involve modifying your e-learning site to make it easier to use for someone with a disability or making the IT training lab (and its facilities) more accessible.

JISC Legal have produced an overview on disability law as it applies to students, which is available at <http://www.jisclegal.ac.uk/disability/accessibility.htm>. You may also wish to view our publication on Content Service Providers and the Disability Discrimination Act <http://www.jisclegal.ac.uk/publications/legalimplicationsDDA.htm>.

6. Freedom of Information Law

Freedom of information (“FOI”) does raise issues for institutions in relation to BCE activities.

Where you hold information about a private organisation as a result of BCE activity (i.e. research, product testing or student placement), a third party could try to access that information using the FOI rules. You would be required to disclose that information unless an exemption applies. This will often be a source of concern for private organisations and, if it is not addressed at the outset, it could place you in a very difficult position.

Accordingly, you must be aware of the information which you hold and should consider whether its retention is necessary. After all, if you do not hold the information, there is no obligation to disclose under FOI. If a student is going on placement with a private organisation to carry out a particular project, you should agree at the outset with the student and employer how sensitive information will be dealt with to minimise any risk of disclosure under FOI. Also, you should assess which exemptions may apply and their limitations.

For more information on these issues, please see JISC Legal's guidance publications, **FOI and Student Work and FOI and Contracts** online at - <http://www.jisclegal.ac.uk/bce/publications.html>.

Institutions are increasingly becoming commercial entities in their own right and may wish to keep information about their own activities out of the public domain for commercial reasons.

For instance, an inquisitive private sector competitor may wish to find out how much money you have been making from your professional training courses, the number of courses run, the sectors targeted and the fees charged. All of this would be useful intelligence to a competitor. Similarly, a private organisation may try to use FOI to mine for information about your ongoing research activities for their own commercial purposes. If you have to disclose this under FOI, it may undermine your ability to commercially exploit that research at a later date.

The FOI rules do provide an exemption where your commercial interests would be prejudiced (or, in Scotland, substantially prejudiced) by disclosure. As BCE activities will often involve a commercial element, you may therefore be able to rely on this exemption if you can demonstrate sufficient prejudice.

For more information on managing disclosure issues, please see our guidance publication, **FOI and Intellectual Property Rights** online at - <http://www.jisclegal.ac.uk/bce/publications.html>.

7. E-commerce Law

Where you deliver BCE activities online (such as the sale of artwork, software or publications, or the provision of web-based training), you must ensure that your website and procedures are e-commerce compliant.

E-commerce Regulations

The E-commerce Regulations require that certain information (for instance, the provider's name and address, and the steps required to complete the contract) is provided on the website. They also set out procedural requirements for acknowledging orders. If you don't comply with the requirements of the Regulations, the customer may sue you for damages or, in certain circumstances, terminate the contract.

Distance Selling Regulations

These Regulations apply to business to consumer transactions which are concluded at a distance (i.e. with no face to face contact). This would include email, telephone, fax or through a website. The Regulations again provide that certain information must be made available to the customer – where the activity is email or web based, this information is in addition to that which is required by the E-commerce Regulations. They also provide the customer with a seven day cooling off period during which s/he may cancel the contract without penalty.

Marketing Regulations

The Marketing Regulations set out rules for sending unsolicited marketing emails (or SMS). Generally, you must have the recipient's consent to the marketing emails (or SMS) unless you collected that person's details in the context of a commercial relationship (i.e. a previous project or provision of a service). The Regulations are enforced by the Information Commissioner and an aggrieved recipient of an unsolicited email (or SMS) can seek compensation from the sender for any damage which s/he has suffered as a result of the breach.,

For more information on these issues, please see JISC Legal's publication **Essential E-commerce**, online at - <http://www.jisclegal.ac.uk/bce/publications.html>.

8. Other Legal Issues Relating to ICT and BCE

Computer Crime

Institutions are affected by computer crime in many of the same ways as other businesses, organisations and individuals. Hacking, fraud and theft, copyright abuse, obscene content (including child pornography) and harassment are all relevant concerns. You should be aware of your legal duties, and consider your IT security to identify and deal with any instances of computer crime.

For more information about Cybercrime, please see the JISC Legal publication **Cybercrime Overview** - <http://www.jisclegal.ac.uk/cybercrime/cybercrime.htm>.

Contract Law

Finally, when you sell something on-line, you are entering into a contract. Just because it is on-line does not mean that general contract law doesn't apply. You should know how and when the contract is concluded and this should fit with your business activities. If you have terms and conditions, make sure these are incorporated into the contract. They should form part of the steps required to conclude the transaction (i.e. a section where the terms are presented to the customer who must agree to them if they wish to proceed). Also, the terms should reflect how you actually do business.

9. Conclusion

BCE does represent a new challenge for many further and higher education institutions in the UK. There are opportunities to develop relationships with the business and social communities and explore new revenue streams. There are, however, also additional risks. Being aware of, and prepared for, the legal issues which may arise will help your institution to maximize those opportunities, whilst managing any associated risk.

20 June 2007