

Business and Community Engagement



BCE and Software Use

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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If you have Adobe Acrobat Reader installed on your computer, you may download a PDF version here - <http://www.jisclegal.ac.uk/pdfs/BCEsoftwareuse.pdf>. (Recommended for printing.) Acrobat Reader is available free from Adobe's web site - <http://www.adobe.com/>.

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Introduction

One of the benefits of being a college or university is that you can generally obtain software at reduced rates on an academic licence. This however may have implications when carrying out your Business and Community Engagement (“BCE”) activities.

Copyright

Software is a copyright work - this means that someone owns the rights to the software and you may only use it if you have their permission to do so. The

permission will come in the form of a licence - this will normally set out who may use the software (i.e. the number of users) and the purposes for which it may be used. If a use falls out with the scope of the licence then that use is unauthorised. It constitutes copyright infringement and could result in the user having to pay damages to the copyright owner. Some examples of unauthorised uses are noted below.

Unauthorised Uses

- Installing one licensed copy on multiple machines;
- Having insufficient licences to cover actual users;
- Using counterfeit software;
 - Using academic software for commercial purposes;
- Allowing network access in excess of the number of authorised users.

Academic Licence

When you license software from a third party, you will normally do so on the basis of an academic licence. This means that the software may only be used for educational and academic purposes, such as teaching students. It may not be used for commercial purposes. Also, the licence may specify that only staff and students may use the software.

These restrictions are extremely important in the context of BCE where you are providing some form of service to the business and/or social communities. These activities do not fall within the core educational functions of teaching and learning - indeed, the BCE activities may be wholly commercial in nature in which case they would fall out with the scope of the academic licence.

Example

The University of Nowhere's computing science department runs a course on website design. The main product which they use is an education version of the leading web site design software, WEB. The licence provides that:-

"Education Version" means a version of the Software, so identified, for use by students and faculty of educational institutions, only."

"Education Versions may not be used for, or distributed to any party for, any commercial purpose."

The department has been trying to develop its links with the business and social communities. One of the services which it offers is that of web design. While the department charges a fee for the service, it considers that the service provides local businesses and community organisations with a cheaper option for the development of websites. After all, the department does not have to pay extortionate licence rates, which helps to keep costs down.

A local business has asked the department to design a website for them. There is also strong interest from the local council in the area (they want a site directed at local children to let them know what activities are available in the area) and the local mothers and toddlers group.

Can the department (lawfully) design these sites?

The institution is also considering offering website design training (using the WEB software) to local people who are unemployed and who have an interest in web design. The courses will be run on a Thursday evening and will be free. You simply turn up on the night.

Is there any problem with this?

Commercial Purpose

The example set out above is not that unrealistic. The University decides to offer a service to the community and utilises the academic resources which it already has at its disposal for the delivery of that service.

The department's first point of reference should be the licence itself - this sets out what can and cannot be done with the software. In this case, the licence is explicit - the education version may not be used for any commercial purpose.

The scope of what constitutes a commercial purpose is very wide and will generally cover any activity which directly or indirectly generates income. It is important to note that the activity need not generate profit – it need only generate income. Also, it makes no difference that the provider is a non profit making or publicly funded organisation - the key issue is the purpose of the activity, rather than the nature of the entity providing it.

In the example above, the provision of website design services (for a fee) to the local business using the WEB software would constitute a commercial purpose. Similarly, designing a website for the council is also likely to be so regarded, even though the site will have a social function. The key issue is the nature of the activity – the University would be charging a fee and would essentially be providing a commercial service.

In terms of the WEB software training classes, the University could argue that the activity is not commercial as the classes are free. There is no direct or indirect commercial benefit and the classes are simply being run for the greater good. There may however be an issue with the capacity of the attendees. As they are not students of the University (they simply turn up on the night), those persons are not entitled to use the software. If the University allowed them access to the software, it would be in breach of the licence.

What is the risk?

There is certainly a risk when using educationally licensed software for commercial purposes. Rights holders (and the organisations which represent them) are becoming increasingly proactive in taking action against infringers. Whilst the main focus to date has been on the business community, the increase in the level of commercial activities being carried out by institutions may attract greater attention to the education sector.

A number of the leading IT organisations and software publishers (such as Microsoft,

Adobe and Apple) are members of the Business Software Alliance (“BSA”). The BSA will investigate alleged software misuse and take action where appropriate. The majority of its investigations commence following a tip off, perhaps from a current or ex-employee, a contractor or an aggrieved competitor. There is even a reward for successful tip offs of 10% of any settlement which the BSA receives, up to a maximum of £10,000!

BSA Investigations are very time consuming. The BSA will often require details of all the software which you have (whether bought from a supplier, online or preinstalled), details of your licences and copies of all relevant invoices. For many organisations, gathering this information will be a significant task. If your licence coverage is insufficient, then the BSA could raise proceedings against you. In the majority of cases however an out of court settlement will be reached. The fact of settlement will be made public - so, quite apart from any direct financial impact, a BSA investigation can result in adverse publicity.

What can you do?

The best way to identify and manage the risks is to know what software you have and what you can do with it. You should carry out software audits periodically and maintain a software asset register. The frequency of the audits will depend on the institution itself, but it is suggested that an audit should be carried out at least annually. The software which you have should be reconciled with and attributed to the licences held. You should have, and be able to access, the licence for each product. The licence details should be noted on the register. The purchasing of new software could perhaps be centralised or at least a procedure put in place for reporting new purchases and removal of applications. This will allow the centralised asset register to be kept up to date. These procedures also help to identify software which is not required anymore or products where licence coverage could be reduced. This could free up resources for other products or additional licenses.

For more information on software management, please see our Software Management Checklist online - <http://www.jisclegal.ac.uk/bce/publications.html>.

There should also be an awareness of what you do in terms of BCE activities, both at an institutional and departmental level- this will allow you to identify where commercial licenses may well be required.

Good software management can also provide opportunities. If staff know what they can and cannot do with the software, they can make best use of that which is available to them.

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