

Business and Community Engagement



Case Study: Copyright and Software Licences

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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Introduction

This case study considers some of the copyright issues which can arise when a college or university uses the software which it holds under licence to provide a commercial training course.

Background

Nowhere College has been providing NC, HNC and HND computing courses for some time now. A large part of these courses involves teaching students how to use the main Microsoft systems and software. As an educational institution the College gets a good deal on software.

Stage 1 – Software Management

The College has a large number of licences (though it is not sure how many) to cover the use of the systems and software for educational purposes.

Firstly, the institution should know exactly what software it has and its exact licence coverage in terms of users and usage. If it does not know this, then the College may be using software without a licence or out with the scope of the licence, or may be paying for software which it does not need anymore. The former instances constitute copyright infringement (which could lead to court action and bad publicity), whilst the latter case is simply a waste of resources.

The leading software producers and the organisations which represent them (such as the Business Software Alliance and FAST) are becoming increasingly proactive on the issue of licensing and licence compliance. The risks of unlicensed software use can be mitigated however through good software management.

Software audits should be carried out periodically and the institution should maintain a centralised software asset register. The software which the institution has should be reconciled with and attributed to the licences held, and the licence details should be noted on the register. The purchasing of new software should be centralised – if this is not practical, a procedure should be put in place for reporting new purchases and removal of applications. This will allow the centralised asset register to be kept up to date. The institution should also retain invoices for software purchased. If the software comes preinstalled on computer equipment, then the invoice for that equipment should be retained.

There should also be an awareness at a departmental and institutional level of the activities which are carried out by or within the institution - this will assist in identifying areas where existing licence coverage is insufficient and where commercial licenses may well be required.

Stage 2 – Scope of Licences

Jones Limited will shortly be upgrading its systems to the latest Microsoft office suite and has asked the College to provide a private training session for its administration staff. The College has agreed to provide the training in its IT training lab using the College's systems and software. Both parties are happy with the fee – whilst it is less than other commercial training providers charge, it is still a good return for the College.

The College licenses the systems and software as an educational user and such use will generally preclude that for any commercial purpose. A commercial purpose will cover any activity which directly or indirectly generates income. 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 status of the entity providing it.

In this case, the College is clearly providing training to Jones Limited on a commercial basis – it is carrying out a private training session for Jones’ employees for a fee. Accordingly, this will not be covered by the licence. It constitutes copyright infringement and exposes the College to a potential infringement claim. It should be noted that there is nothing wrong with institutions providing training on a commercial basis provided that there is a commercial licence in place to cover that training. Accordingly, the College would need to procure a commercial licence for this training.

Stage 3 – Authorised Users

The College allows the public access (on payment of a fee) to its computer facilities in the evenings during the week and on Saturday mornings. Each user is logged on using an administrator log on - this gives the user access to the internet, as well as the other educational/academic resources which the College subscribes to.

There are various issues which should cause concern here. Firstly, the College is allowing access to its facilities, its software and its resources for a fee. This would be regarded as a commercial activity, whatever its motive for doing so, and would fall out with the institution’s licences. This could expose the institution to infringement claims and bad publicity, and could potentially jeopardise its subscription to the software/resources in question.

Secondly, educational/academic licences generally only extend to the institution’s students (ie full and part time matriculated students). Such a licence would not cover members of the general public. Accordingly, this too represents an unauthorised use which could expose the College.

Finally, the institution is also inviting significant risk upon itself – as each person is using an administrator log on, the College has no visibility (and therefore no control) as to who is using the facilities and what they are using them for. The users could be downloading inappropriate material on to the institution’s system or could be using the system for unlawful activities (i.e. making infringing copies of copyright work, sending spam or harassment).

Checklist - Copyright and Software Licences:

1. Have a software management plan in place:-

- **Know what software you have**
- **Know what licences you have**
- **Maintain a software register**
- **Implement a software policy**
- **Conduct regular audits**

For more information on these issues, please refer to our Software Management Checklist.

2. Know what activities are permitted under the licence.

3. Where an activity is not covered by the licence, seek permission from the rights holder.

4. Know who may use the software under the licence.

5. Know who is using your systems and for what.

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