

**Newsletter
August 2010**

**Legal Guidance for ICT Use in
Education, Research and
External Engagement**

View the online version and back issues at www.jisclegal.ac.uk/Newsletter.aspx.

Welcome

Welcome to the JISC Legal newsletter covering what's been happening in July 2010.

We have published two guidance documents this month: [The Digital Economy Act 2010: Implications for UK Colleges and Universities](#) and [Recording Lectures: Legal Considerations](#). Please see the publications section below for more detailed information on these two documents.

This month also marked our 100th follower on [Twitter](#)! Thanks to everyone who follows us! We are also active on [Vimeo](#), [YouTube](#), [Slideshare](#) and [Delicious](#).

For further details and to keep-in-touch with developments in IT law, please check the relevant section of the newsletter.

As with previous newsletters, this newsletter has three sections:

1. Legal News Digest for FE and HE
2. New JISC Legal Publications
3. Upcoming JISC Legal Events

For up to the minute news, our full range of publications, our events diary and our three-day turnaround legal enquiry service, visit our website at www.jisclegal.ac.uk. Details of what's on offer from JISC Advance can be found at: <http://www.jiscadvance.ac.uk/>.

News

[Intellectual Property Needs in the Digital Age](#)

The role of teachers, researchers and creative artists as well as rights holders must all be recognised within any new intellectual property framework. This is the view expressed in the publication 'Driving UK Research - Is copyright a help or a hindrance - A perspective from the research community' published by the British Library. The document includes a call for an extension to fair dealing provisions under UK copyright law to bring them into line with fair use doctrine in the US. The document, which will be of interest to those working in FE and HE, can be accessed in pdf format on the British Library website at: <http://www.bl.uk/ip/pdf/drivingukresearch.pdf>.

(Posted on 30/07/2010)

[Facebook 'Joke' Backfires in £10,000 Libel Damages](#)

The High Court has awarded libel damages amounting to £10,000 to Raymond Bryce as compensation for stress and anxiety after an image of child sexual abuse, together with a comment falsely indicating he

was a paedophile, was posted onto his Facebook page. The image could be viewed by hundreds of users and, although removed in 24 hours, the court held that the information was defamatory and deeply offensive. Damages were awarded to compensate for harm to Mr Bryce's reputation and for injury to his feelings. This can be an ongoing issue for staff and students in FE and HE institutions and the article may be useful to illustrate the need for users to ensure privacy settings restrict who can post information onto pages, and to highlight potential consequences of posting defamatory content onto other members' profiles. To access the full article, please go to: <http://www.dailymail.co.uk/news/article-1298010/Facebook-libel-Law-student-dubbed-paedophile-wins-10-000-libel-damages.html>.
(Posted on 28/07/10)

[Nowhere to Run - EU Online Copyright Infringement Agreement Being Drawn Up](#)

A working party representing 37 EU countries is currently negotiating the Anti-counterfeiting Trade Agreement (ACTA) which intends to tackle online copyright infringements on an international level. The Digital Economy Act 2010 (DEA), a new UK law aimed at reducing illegal peer to peer file sharing activity, has recently been introduced and ACTA aims to widen similar legal provisions across the EU. One of the main issues for the working party to overcome is the lack of legal harmonisation across the EU at present; Individual countries have adopted very different methods for tackling illegal file sharing and definitions of what constitutes an offence. However, the main debate concerns how ACTA could contravene EU citizen's privacy and personal data protection rights in favour of the rights of copyright holders and commercial companies. Controversially, ACTA could see laptop hard drives and files being searched in borders and customs checks and large scale monitoring and law enforcement procedures being introduced. The finalised agreement will have to be adopted by member states and could mean further implications for UK online copyright law. For the full article on these developments please go to: <http://blogs.telegraph.co.uk/technology/shanerichmond/100005358/eu-concerned-about-acta-privacy-implications/>.

(Posted on 28/07/10)

[Taking the RAP - the ICO's FOI Regulatory Action Policy](#)

The Information Commissioner's Office has published a Freedom of Information Regulatory Action Policy, stating the factors it will use in deciding between the different enforcement mechanisms open to it. It makes clear that action will be likely in the case of repeated and serious breaches, lack of understanding and disregard, but colleges and universities endeavouring to comply may take some comfort in knowing that the ICO is unlikely to exercise regulatory power in relation to minor, non-repetitive infringements. The policy is available at:

http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/freedom_of_information_regulatory_action_policy.pdf.

(Posted on 26/07/10)

[University Must Disclose Raw Research Data](#)

Following a three year battle to prevent disclosure of research data, Queen's University Belfast was ordered by the Information Commissioner's Office (ICO) to provide raw research data under Freedom of Information regulations or, more specifically in this case, Environmental Information Regulations. QUB refused a request for the disclosure of raw tree data gathered over a 40 year period under regulation 12 of EIR. They claimed the information was unfinished, that disclosure would adversely affect intellectual property rights and that the information was commercially confidential. They also stated that there was a risk of harm to QUB, negligible public interest in the release of the information and that the request was manifestly unreasonable. At the end of March 2010, the ICO found that the data was held electronically and therefore did not place a significant burden on QUB to disclose it. The claim that the data was meaningless was not a valid consideration and, as the data had already been collected, it was not incomplete. The ICO also said that QUB did not in fact hold intellectual property rights in the raw data itself and that, although the information was commercial in nature, it was not subject to confidentiality as it had not been shared with any other party. In conclusion the ICO held that QUB had wrongly applied exceptions in regulation 12 and failed to comply with operational regulations in its handling of the complaint. This decision has obvious far reaching consequences for institutions holding raw data for the purposes of research, even where that research is as yet unpublished. The issues raised here link with the recent University of East Anglia case referred to in an earlier JISC Legal news item. The full ICO report can be accessed at:

http://www.ico.gov.uk/upload/documents/decisionnotices/2010/fs_50163282.pdf.

(Posted on 23/07/10)

[JISC Podcast on the Digital Economy Act](#)

JISC Legal's Kirsty McLaughlin answered questions about what the Digital Economy Act could mean for universities and colleges in this JISC podcast. To listen to the podcast, please go to:

<http://www.jisc.ac.uk/Home/news/stories/2010/07/podcast109digitaleconomyact.aspx>. JISC Legal's guidance document on the Digital Economy Act is available here: <http://www.jisclegal.ac.uk/DEA>.

(Posted on 20/07/10)

['Umbrella' Data Protection Agreement with US](#)

The European Commission is planning to initiate negotiations with the US to establish an 'umbrella data protection agreement' providing legal certainty and high standards of data protection for data transfers. Currently, EU data protection law permits personal data to be passed outside Europe only where there are equivalent protections in place. All EU member states will consider the plan prior to negotiations. The planned 'umbrella' agreement should improve the ease of transfer of data to and from the US and provide reassurance for data subjects. This agreement will be of interest to institutions that currently restrict what personal information is transferred outside Europe and have to negotiate separate agreements for the protection of that data. For more information, please go to: <http://www.out-law.com/page-11220>.

(Posted on 13/07/10)

[Government Commits to a New Libel Bill](#)

Justice Minister, Lord McNally, has announced that the UK Government will publish a Defamation Bill next year to balance freedom of expression with protection of reputation, and reduce libel tourism. Lord McNally emphasised the need for responsible journalism and opportunities for academic and scientific debate to take place without being threatened by current unsatisfactory defamation laws. A private member's bill by Lord Lester is currently being debated in the House of Lords and proposes a 14 day period for ISPs to take action when aware that defamatory material has been published. Although Lord Lester's bill will not be adopted by the Government, its proposals will be considered. Any time period allowing ISPs to remove defamatory works before facing liability will be of particular interest to institutions. Consultations on the Defamation Bill will take place over the summer. More information can be accessed at: <http://www.out-law.com/page-11219>.

(Posted on 13/07/10)

[Facebook's Privacy Under German Investigation](#)

The Hamburg Data Protection Officer, Johannes Caspar, has sent a letter to Facebook as part of a formal investigation into its privacy policies. He claims that the collection, retention and use of private data of non-registered members by Facebook is illegal and against privacy regulations. Although Facebook changed their policy in April, allowing users to block access to email contacts, Caspar argues that previously saved details continue to be retained and used without permission. Facebook has until 11 August to respond. This article highlights the importance of every user's privacy and reminds FE and HE institutions to ensure they have permission to collect and make further use of each individual's personal information. Further details are available at: http://news.cnet.com/8301-13577_3-20009886-36.html.

(Posted on 12/07/10)

[BT and TalkTalk Push for Judicial Review of Digital Economy Act](#)

Two internet service providers, BT and TalkTalk, have asked for a judicial review of the Digital Economy Act because they believe it was 'rushed through Parliament' and may not be consistent with EU legislation. For more information please refer to: <http://news.bbc.co.uk/1/hi/technology/10542400.stm>.

(Posted on 08/07/10)

[How to Collect and Use Online Personal Data](#)

The new ICO Code of Practice explains how online personal information can be collected and used by organisations. It includes the collection and use of personal data provided through online applications, use of cookies to target content, marketing goods or delivering public services and the use of cloud computing facilities. The code also provides good practice advice for organisations doing business online. This will be relevant for all FE and HE institutions gathering and making use of online personal information. The code can be accessed at:

http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/personal_information_online_cop.pdf.

(Posted on 08/07/10)

[Call for Openness in Research Data](#)

Scientists at the Climatic Research Unit (CRU) at the University of East Anglia acted rigorously and honestly in their advice to the Intergovernmental Panel on Climate Change (IPCC). This is the conclusion of 'The Independent Climate Change E-mails Review' which was set up to investigate allegations with respect to climate science at the University of East Anglia - the so-called 'ClimateGate' affair. The review was started in December 2009 after emails from the University of East Anglia's CRU were hacked and published online. The report strongly states the need for researchers to be open with their data and for compliance with the Freedom of Information Act 2000 to be owned, supported and reinforced by University leadership. The report of the Independent Climate Change Email Review can be accessed here: <http://www.cce-review.org/>.

(Posted on 08/07/10)

[Call for Evidence on DPA](#)

With a view to future negotiations for a new EU data protection instrument in 2011, the Ministry of Justice has published a call for evidence on how the European Data Protection Directive 95/46/EC and the Data Protection Act 1998 (DPA) are working and impacting on organisations. The Government is looking for evidence and information on definitions, data subjects' rights, obligations of data controllers, penalties and powers of the Information Commissioner, principles, exemptions and international transfers. Institutions interested in taking part have until 6 October 2010. The Government has also published an impact review of the DPA which is now open for comment. For more information please go to:

<http://www.justice.gov.uk/consultations/call-for-evidence-060710.htm>.

(Posted on 06/07/10)

[Equality Act Timetable Back on Track](#)

The Equality Act was passed before the general election with a view to implementing most of the equality laws in October 2010. This time frame was, however, in doubt after the Government Equalities Office (GEO) removed the existing timetable from their website claiming that the new Government had still to conclude their legislative programme. The GEO have now stated that the implementation of the Act will go ahead as originally planned and offer relevant guidance for the voluntary, public, private sectors as well as information for individuals. For more information on this article go to: <http://www.out-law.com/page-11200>. The GEO summary guide for public sector organisations and the Acas guidance for employers will be particularly relevant for FE and HE institutions. They can be accessed at: http://www.equalities.gov.uk/equality_act_2010/equality_act_2010_what_do_i_n.aspx.

(Posted on 06/07/10)

[US Gets Tough on Piracy Websites](#)

Following a large scale investigation involving the US and the Netherlands, nine websites accused of offering links to pirated films have been shut down and had their bank accounts seized. Users could access the sites for free but advertising and donations were used to generate income. Taken together the websites had 6.7 million visitors a month. This article is a reminder for institutions to be vigilant in ensuring links to copyright infringing materials and illegal file sharing do not appear on their websites. More information on the story is available at:

http://news.bbc.co.uk/1/hi/entertainment_and_arts/10475801.stm.

(Posted on 05/07/10)

[Facebook Improves its Privacy Practices.](#)

Facebook has begun to make changes to its site to improve its privacy practices. The new system brings all of the site's settings onto one page, with suggested default settings. To access the private sections of a user's profile, an application will have to explicitly ask for the user's permission. This forced overhaul of Facebook's privacy settings should serve as a reminder to FE and HE institutions to have regard to the privacy of individuals and to ensure that users can simply understand what their personal information is being used for. Further details of the story can be found on the BBC website at:

<http://news.bbc.co.uk/1/hi/technology/10472844.stm>.

(Posted on 02/07/10)

Publications

[The Digital Economy Act 2010: Implications for UK Colleges and Universities \(23/07/2010\)](#)

This guidance document examines the Digital Economy Act 2010 and its implications for universities and colleges in the UK.

[Recording Lectures: Legal Considerations \(28/07/2010\)](#)

This guidance examines the legal implications of recording lectures at UK FE and HE institutions, focusing mainly on the issues of copyright and consent. It includes a flow chart of the legal issues and model consent form for institutions to use.

Events

[ERA Plus- The Benefits Explained \(09/09/2010\)](#)

The British Universities Film and Video Council is hosting this event focusing on how to implement online services based on the ERA Plus Licence.

Contact Us

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