

Web 2.0 Tutor's Legal Issues Checklist

Could my proposed use of Web 2.0 technology...



[General Considerations]

... harm the reputation of my institution, or any partner organisation?

Where there are grounds for judging particular sensitivity or risk, it is important to ensure that there is appropriate consultation before the adoption of the technology. For certainty, it may be beneficial to seek the approval of relevant senior management beforehand.

... breach the technology's terms and conditions?

Breach of the terms and conditions of the site will give rise to some level of legal liability, will introduce uncertainty as to whether the use of the tool or site could be withdrawn with disruption to the students' learning, and may prevent dissemination of what would otherwise be a good example of teaching and learning innovation.

... put me in a difficult situation if the externally-hosted technology is withdrawn during term?

Students may have an action against the institution if their learning is disrupted through the negligence of the institution or its agents, or in breach of a contract. A judgment may need to be made as to the durability of each particular technology.

[Intellectual Property Law]

... lead to any dispute over the ownership of what is going to be created using the technology?

Particularly in the case of collaboration, or the creation of resources for re-use or with a potential commercial value, it is important to make clear who is to own intellectual property in the output created using Web 2.0 technologies. Particular care will be needed where the tutor requires students to 'hand over' their intellectual property rights to the institution – this may be invalid in law. Copyright in materials created by staff in the course of their employment will belong to the institution, unless there is an agreement otherwise.

... involve me putting copyright material online without permission or statutory exception?

The member of staff may be liable for copyright infringement, and the institution liable for the acts of its employee. It may also mean that innovative activity needs to be withdrawn or hidden due to copyright infringement, whereas it could otherwise be hailed as an example of good practice.

... incite students to put copyright material online without permission or statutory exception?

At the very least this will be bad practice and a bad example to set, and it's possible that there might be institutional liability where students are acting under the direction or instruction of the college or university.

... involve the copying of designs, a database or other intellectual property protected resources?

It's not just copyright and patents. Designs may be subject to intellectual property rights, as might databases. Also, remember that there may be a number of rights involved – a CD involves copyright in the disc's cover, copyright in the musical composition and the lyrics, performance rights, and rights in the recording. These all need to be cleared where relevant, and may not be held by one person or body.

... lead to details of a potentially patentable invention being made known to the public?

This could be a very dangerous situation, as a patent will not be granted if details are made public prior to the patent application. A slip in releasing details on a discussion list could prevent your institution or a partner body getting a valuable patent, and that could mean a big loss or damages.

[Data Protection Law]

- ... mean that personal information is accessible by unauthorised persons?**

The Data Protection Act 1998 requires your institution to take care of personal information. This could be your students' personal data, or perhaps research data about other people. In either case, there is a duty only to process or release the data in compliance with the act, and to keep it secure otherwise. Ensure that you treat the personal data with respect, and consider whether the information could be made anonymous instead.
- ... require students to sign up to an externally-hosted technology?**

If you let students know about a Web 2.0 tool that might assist them, they will have the choice as to whether they submit personal information to that site. However, where you require them to use a technology as part of their course, it may be difficult to say that they have given 'consent' where they'd have to drop out of the course otherwise.
- ... involve the holding of external information where public release would be an issues?**

By virtue of freedom of information legislation, institutions must release information held by them upon request, unless non-release is justified by a narrowly-interpreted exception under the legislation. This includes other people's information that you hold, so be careful when sensitive information might be received from third parties, and you don't want to lose their trust.

[Liability Issues]

- ... be used as a tool for bullying, harassment, or defamation?**

Where the institution is negligent in allowing Web 2.0 facilities to be used inappropriately, it may be liable for harm to the victim. It is important therefore to set out limits as to permissible behaviour, and to provide moderation and a means for users to complain.
- ... leave uncertainty as to what should be done in the case of a complaint being made?**

Where the use of a Web 2.0 technology involves setting up a means for communication, you should ensure that there is a clear mechanism for dealing with complaints, and know what needs to be done if it used.
- ... allow the posting, storage, or dissemination of inappropriate and possibly illegal content?**

Where there is the capacity for mischief, you should ensure that you set out what behaviour is acceptable, consider moderation of content, and consider what steps would be reasonable to prevent misuse.
- ... prevent the taking down of illegal or inappropriate content under the institution's name?**

Where a Web 2.0 tool is hosted externally, you may wish to consider whether you have sufficient control over the content should inappropriate use arise, linked with your institution's name.

[Accessibility Law]

- ... place students with disabilities at a disadvantage?**

The Disability Discrimination Act 1995 (as amended) places a duty on institutions to be proactive in meeting the needs of users with disabilities. Ensure that any technologies adapted can meet the needs of all users.
- ... prevent me from making reasonable adjustments to accommodate particular needs?**

The law requires institutions to make reasonable adjustments to accommodate the needs of users with disabilities. It is best to consider in advance what adaptations could be made to a Web 2.0 technology to be adopted in order to ensure compliance, and to ensure accessible learning for all.