

FAQs on Web 2.0, and the Law



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1. What are the legal issues that might be encountered in respect to using Web 2.0 technologies at our institution?

The main legal issues concern data protection law, copyright law, liability issues, and accessibility law.

2. Why is proper clearance of rights necessary when facilitating use of Web 2.0 technologies involving user-generated content like wikis at institutions?

Content posted in wikis might some times contain copyright infringing, third-party copyright material, orphan works or those infringing the moral rights of the copyright owners. This poses the risk of an institution being held liable for copyright infringement, either through the action of its agents (employees), or by virtue of secondary infringement of copyright (providing the technology which allows infringement). Proper clearance of rights prior to posting material in wikis will avoid the liability of an institution for such illegal material.

3. Is uploading, storing or archiving of video files from YouTube on an institutional Web 2.0 platform for learning or teaching purposes illegal?

Uploading, storing or archiving of legal video files from YouTube on an institutional Web 2.0 platform for learning or teaching purposes by itself is not illegal. But, it would be illegal to upload, store or archive on to an institutional Web 2.0

platform copyright infringing videos, irrespective of whether they're on YouTube.

4. Staff at our institution wish to use new Web 2.0 technologies like Second Life for learning and teaching, for example for sharing information, performing surveys, hosting discussions and inviting comments on specific topics. Do such technologies pose any legal risks?

If used within the legal boundaries, 3D digital environments like Second Life are unlikely to pose issues for learning or teaching at institutions. If not, they could create issues especially relating to copyright and moral rights infringement and liability for defamatory or obscene content posted in them.

5. An institution wishes to collect the personal data of its Web 2.0 platform users for purposes of marketing or advertising. Does this breach the Data Protection Act 1988?

Collecting the personal data of individuals using a Web 2.0 platform for purposes of advertising or marketing by itself will not breach the Data Protection Act 1988. It should however be noted that users have the right to object to this. Therefore, users of the Web 2.0 platform should be given the opportunity to opt out of being exposed to marketing or advertising material when facilitating its use at the institution.

6. Can an institution be held liable for defamatory comments by its employee in a personal blog operated by him from his home?

If the institution had authorised the conduct of an employee the institution could be held vicariously liable for his actions. If however, the action of the employee was outside the activity authorised by the institution, the institution may not be held liable. Personal blogs operated by employee from the confines of his home is likely to fall outside the scope of an activity authorised by an institution and therefore defamatory comments posted on them is unlikely to create liability for an institution.

7. Our IT support staff have come across racist remarks on our institutions Web 2.0 platform? What should they do?

Institutions operating Web 2.0 platforms should primarily provide for a notice and take down procedure so as to minimise liability for illegal, offending and infringing content. Where the comments stirring up hatred against persons on racial or religious grounds are identified as originating from an institutions network, IT support staff needs to act to trace the activity to specific computers and identify individuals. The notification should trigger an incident response procedure which comes into effect and which removes the offending material.

8. What should institutions do so that disabled students are not placed at a disadvantage when using Web 2.0 technologies?

The Disability Discrimination Act 1995 prohibits discrimination against disabled people in a range of circumstances. Therefore,

- (a) Institutions that facilitate Web 2.0 technologies must not discriminate in the student services it provides or offers to provide through it.

- (b) Institutions should not treat disabled students less favourably without justification and
- (c) Institutions must make reasonable adjustments to a Web 2.0 technology so that a disabled student is not placed at a substantial disadvantage.

9. What is the significance of staff IPR policies and contracts of employment with regard to using Web 2.0 technologies as a learning tool at institutions?

Using Web 2.0 technologies at institutions might involve a number of members of staff jointly contributing to the development of learning resources. Here, individual members might wish to claim ownership in the content they contributed to the resource. This could create issues relating of IPR ownership if the content they contributed is jointly created and the level of contribution by each member of staff is unclear. Hence, there is a need that the institution gives due regard to the development and framing of staff IPR policies and contracts of employment that address these challenges posed by Web 2.0 technologies.

10. What are some of the useful tips for institutions to minimise liability and be legally compliant when facilitating Web 2.0 technologies?

- (a) Institutions using Web 2.0 technology should support its use with a 'terms of use' or acceptable use policy (AUP) policy.
- (b) The terms of use or AUP policy should be drafted to avoid any legalese language or unnecessary jargon as far as possible. This helps users to understand what they can and cannot do when using Web 2.0 technologies.
- (c) Due consideration should be given to the legal risks and issues pertaining to using Web 2.0 technologies in an institutions terms of use or AUP and in any third-party agreements.
- (d) It should be ensured that any terms of use, AUP and agreements are complied with and that any use is within the bounds of these.