

Web 2.0 and the Law for Learning Resource Staff



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1. What is Web 2.0?

Definitions of Web 2.0 are wide but generally encompass the shift from a user receiving content and information, to web-based platforms and applications which allow the user to more easily generate content themselves. For the purposes of this paper we will be focussing on social networking aspects such as the use of blogs and social networking sites e.g. Bebo and Facebook. We shall also look at wikis and podcasting.

Web 2.0 assumes that service provision may take place anywhere anytime with widespread use of mobile devices, making international transfers and cross boundary access to information the norm. Web 2.0 services are totally dependent on a robust telecommunications provision (and may in fact be reminiscent of the 1980's mainframe where the user was geographically thousands of miles away).

Web.2.0 places the user at the centre of technology

Web 2.0 encourages user generated content

Web 2.0 assumes mobility and ease of use

2. How are Web 2.0 Tools Being Used by Staff in FE?

Institutions have responded in a variety of ways to the opportunities of Web 2.0. Some are presenting the new functionality simply as additional services which staff may or may not choose to use, but others are very actively embedding the technology into compulsory activities within courses. Colleges are currently considering offering or indeed using Web 2.0 technologies in the following broad categories:

- **Offering social networking tools internally:** some colleges may consider the use of tools hosted within on their own network, e.g. one institution already offers personal blogs to its students via its own blogging system.
- **Using external social networking tools:** it is more likely that third party i.e. external tools and software services might be considered, for example using Google Apps or social networking sites for communication with students. Programs provided and managed by a third party are generally maintained and supported remotely.
- **Asking users to use tools:** there are now cases in institutions where staff communicate with their students via Facebook.
- **Staff may use social networking tools:** staff may communicate with research colleagues or staff at other sites via a Web 2.0 platform for ease and speed.

The BBC news estimate of 175,000 new blogs being set up every day and new ones appearing on a regular basis is ample proof of the proliferation of social networking tools (<http://news.bbc.co.uk/2/hi/technology/6446271.stm>).

Examples of how Web 2.0 technologies are being used by college staff include:

- PDA and MP3 technology is made available for student use in learning centres to allow students the opportunity for content creation via these media
- Podcasts by staff are available for students to download on topics such as library services or to provide induction information
- Library blogs
- Second Life – currently more common for universities to have a presence
- Courses being run via blogs or student e-portfolio systems set up using blogging software
- Podcasting of lectures
- Online reading list creation and management using social software
- Resource sharing using social bookmarking such as Del.icio.us
- RSS feeds to highlight new books or library news

See the LSE Project <http://clt.lse.ac.uk/Projects/LASSIE.php> for more examples.

3. The Legal Framework in the Context of Web 2.0

Colleges should already be adhering to the acceptable use policy of their Internet Service Provider, for example the JANET AUP. They should also have in place their own policies and procedures, which encompass the ISP's requirements, on acceptable use of computers by students and staff. These should ideally be technology neutral and thus will apply equally in a Web 2.0 environment. The legal position with regard to Web 2.0 is no different to the law surrounding earlier uses of IT. It is the nature of Web 2.0 which has perhaps changed the legal emphasis. For example, Web 2.0 social networking sites permit greater recorded data sharing by individuals, which has an impact on data protection law and the law of defamation as well as on stalking, bullying and harassment. It also enables copyright infringement on a grand scale.

The main legal framework is found in the following pieces of legislation:

Data Protection Act 1998

http://www.opsi.gov.uk/acts/acts1998/ukpga_19980029_en_1

Copyright Designs and Patents Act 1988

http://www.opsi.gov.uk/acts/acts1988/Ukpga_19880048_en_1.htm

Defamation Act 1996

http://www.opsi.gov.uk/acts/acts1996/ukpga_19960031_en_1

Disability Discrimination Act 1995

http://www.opsi.gov.uk/acts/acts1995/Ukpga_19950050_en_1.htm

Computer Misuse Act 1990

http://www.opsi.gov.uk/acts/acts1990/Ukpga_19900018_en_1.htm

Protection from Harassment Act 1997

http://www.opsi.gov.uk/acts/acts1997/ukpga_19970040_en_1

The same law applies to Web 2.0 technologies and their use as to other IT

4. What are the Legal Risks?

Four main areas of legal concern have come to the fore so far with regards to user generated content and Web 2.0 tools.

4.1 Intellectual Property Rights

There are probably two initial areas of concern as far intellectual property rights are concerned – copyright and moral rights.

UK copyright law states that the first copyright owner is the creator of the content. Web 2.0 platforms such as blogs and wikis encourage contributions by users. If employees, as part of their employment duties, is encouraged to blog regarding work related matters in their working hours, it is not inconceivable that under UK copyright law, the content they contribute will in fact belong to his employer. But in the absence of any agreement to the contrary, the employees will all be copyright owners in the work to which they have contributed. With a number of copyright owners, identification of individual authors may be a very important issue but at the same would prove to be difficult if their individual contributions are not discernible. Therefore, these are issues which need to be dealt with primarily before facilitating use of Web 2.0 technologies by learning resource staff at colleges. Risk mitigation techniques to prevent such issues could include providing provisions covering copyright ownership in acceptable use policies, getting copyright assignment from contributors to the Web 2.0 platform and also the incorporation of intellectual property rights ownership provisions in staff employment contracts.

Apart from the exclusive rights, a copyright owner is also conferred certain rights which remain with the original creator and affect how subsequent owners deal with the work. Such rights are known as moral rights. These are the rights to be identified as the author (the paternity right) the right to object to derogatory treatment and to object to false attribution. Thus for example taking material out of context, and re-using in what the author considers to be a derogatory way can result in allegations of breach of moral rights and in unwanted disputes.

It may be that in the future an implied licence will always be assumed with regard to public websites if there are no stated terms of use, but at the present time, use is controlled by contract and licence and the Copyright Designs and Patents Act 1988 (CDPA).

The assertion is that the ease of use of Web 2.0 applications allows the user with little web skill or knowledge to put their own content, as well as third party content, online thus encouraging social networking and development. Content is portable and re-using and re-mixing easier and commonplace in Web 2.0 applications, but current IPR law permits this in limited circumstances only. Copyright licensing

currently remains the main route to obtaining permission to use and adapt someone else's material.

With more user involvement as creators of material comes a greater desire for control by these users. An increased interest in creative commons, open source licences and moral rights, to ensure recognition, might therefore be expected in the Web 2.0 environment. However, unless there is a fundamental shift in the business model, this may conflict with some current practices, for example requirements associated with external research funding and the commercialisation of research.

4.2 Data Protection

Staff and students may use blogs, wikis, and social networking sites to share personal information. Where learning resource centres or their college play the role of facilitating or hosting such Web 2.0 technologies they are placed under an increased responsibility to safeguard the personal data that users post in the Web 2.0 technology. It is at this point that colleges need to be aware of their obligations under the Data Protection Act 1998 (DPA).

DPA applies to any personal data relating to any identifiable living individual. It includes data regarding an individual's race or ethnic origin, political opinion, religious beliefs, trade union membership, physical or mental health, sex life, criminal proceedings or convictions. Even just identifying people online can breach data protection legislation and if the information disclosed is sensitive personal data then the breach is likely to be considered especially serious.

Learning resources staff might play a key role in implementing Web 2.0 learning and teaching platforms by means of social networking tools. Here, issues could arise in relation to privacy settings. Users may assume more privacy than is given by the default settings of their social networking website – “I thought it was a private group” is a common cry. For example, a learning resource staff may choose to communicate with students using the Web 2.0 platforms, but some students may not wish to sign up to Facebook because they have privacy concerns. There have been incidents in which apparently technically aware students have put home address details on their Facebook page and then disclosed they will be going away on holiday. If staffs suggest students use these tools, they should also be making sure they are aware of privacy issues and what they have signed up to with regard to the use and prospective use being made of their data.

There is therefore an onus on the staff to inform students of the risks and of the rights of the external service to hold and use your data and to offer alternatives where a student is uneasy. This would require that staff primarily acquaint themselves with the principles of fair and lawful processing of personal data and alert users on the risk involved with sharing personal data on social networking teaching platforms before facilitating its use.

4.3 Liability for Content

The essence of Web 2.0 is the ability and desirability of a user at any level to post and edit content. Wikis are good examples of this. Liability could arise for the posting of inaccurate, defamatory and copyright infringing content. Risks could also arise for actions by staff or students for bullying, harassment and stalking done through the medium of Web 2.0 platforms.

4.4 Liability for Inaccurate Information

Where learning resource centres lack the resources to verify the accuracy or completeness of the information or to edit the content prior to uploading it into the wiki, there is a risk that the content submitted is inaccurate or misleading. The liability for inaccurate information in wikis might be less when compared to liability for contents that would bring the college into disrepute. But, it still does open the likelihood of the centre or the college being held if users act based on the information provided in the platform.

4.5 Liability for Defamatory Content

Blogs as a classic Web 2.0 output are often set up on a non controlled basis – i.e. no editorial control is exerted. UK defamation laws therefore will apply to blogs as will the ‘notice and take down’ principle established and reaffirmed in UK case law.

Employers also recognise the value of blogs and increasingly encourage blogging (for example, for research or as a marketing tool) by their employees. Similar situations at learning resource centres could place them or even the college at the risk of being held vicariously liable for the actions of their employees with regard to defaming statements made on the blog.

Thus, the increased user friendliness and user control concepts of the more casual Web 2.0 setting may very well result in a corresponding increase in the risks of defamation, breach of employment contracts, professional negligence and malicious damage, all of which could result in an increased intervention and editorial control than presently anticipated. In other words, reversion to Web 1.0 type controls.

This is likely to remain the situation while the arena stabilises – there may come a point when codes of conduct decided by the users will rule, and there are already signs that on some groups peer moderation is taking place.

4.6 Liability for Copyright Infringing Content

If infringing content is provided for users without moderation at learning resource centres, it may be able to say it did not know about it. But it poses the likelihood for the centre falling foul of an accusation of secondary infringement. This might be particularly so where content contributed by authors comprise third-party copyright material or even orphan works (works in which the rights holder cannot be traced or are unknown). Appropriate copyright clearance or permissions are necessary to post these materials in the wiki. Where such clearance or permission is lacking the centre or college could face the risk of being sued for hosting copyright infringing content. This could also indirectly affect the proper running of the wiki.

4.7 Bullying / Harassment / Stalking Using Web 2.0 Platforms

Of note to point out is also that social networking websites may increase instances of victimisation by ease of sharing of comments, video and photographs. In Scotland this may fall under breach of the peace and in English law under the Harassment Act 1997.

4.8 Disability Discrimination Law

Disability discrimination law applies to colleges and universities as service providers, employers and educational service providers. The full range of the services offered (e.g. educational or offering of physical space for venues) to its staff, students and third parties will all therefore, come within the scope of the legislation. The law is framed in general terms and is not intended to prevent or place barriers in the way of innovative use of technology. Reasonable adjustments should be made wherever possible to prevent substantial disadvantage. The Disability Equality Duty reinforces the expectation and requirement that colleges and universities should be anticipatory and proactive in encouraging disabled persons to participate in tertiary education activities.

In general terms this will mean that if Web 2.0 technologies (e.g. blogging software or podcasts) are used to provide information, then wherever possible they should be accessible or workarounds offered. The tools may have changed but there is still the same requirement for accessibility!

An interesting result of accessibility requirements may be increased control of user input through standards, which in itself may conflict with the essence of Web 2.0.

5. Minimising the Risk - Some Typical Questions

- What can we do with material on social networking sites?

Who put it there probably dictates what you can do with the material. Staff or students are likely to have different disciplinary route and could be dealt with under the institution's code of conduct.

- Who owns the copyright when a number of people contribute to a wiki?

Ownership can vary and should be considered in the early stages of any collaboration. Users who consider posting to wikis should be given a clear idea through policies, disclaimers, contracts as to who owns content in Web 2.0 platforms.

- What about social networking tools for disabled users?

If asking students to use these, they need to be accessible or a workaround provided.

- What can we do if a user puts up an embarrassing video about the library?

Ask the user to remove it, and consider using the student/user code of conduct. The college should therefore provide for a notice and take down procedure to deal with such conduct.

6. Conclusion

Web 2.0 brings greater user control and ease of use. This brings with it a corresponding increase in risk of breach of current law on copyright, data protection, and disability discrimination. There may be increased rather than less use of various licensing models to protect core assets, along with increasing requirement for standards, given the greater user input. At the end of the day this latest version of the web faces the same legal constraints as previous versions, but with the increased social networking intrinsic to the concept comes a correspondingly increased risk of breach of current legal regulations.

7. Checklist

- Check there are no technical restrictions placed on access by the college IT staff
- Can the facility be closed quickly pending investigation if facility is compromised and college reputation is at risk
- Use notice and take down policies rather than heavy handed monitoring
- Are users aware of data protection issues and privacy setting checks?
- Set rules for behaviour where necessary and ensure fit with existing rules and policies
- Consider whether tools e.g. blogging software, have longevity –smaller the outfit the greater the risk of it disappearing – with your content – back up in place?
- Check terms and conditions of third party tools

8. Further Information

For an overview of the definition on Web 2.0, see Paul Anderson “*What is Web 2.0? Ideas, technologies and implications for education*” (JISC Techwatch 2007)

<http://www.jisc.ac.uk/media/documents/techwatch/tsw0701b.pdf>

For more on copyright, see the JISC Legal web pages at:

<http://www.jisclegal.ac.uk/ipr/IntellectualProperty.htm> and the materials produced by the JISC IPR Consultancy at: <http://www.jisc.ac.uk/whatwedo/projects/ipr>

Out-law.com webpage on user generated content <http://www.out-law.com/page-7807>

Godfrey v Demon Internet Ltd (2001) QB 201 available at

<http://www.bailii.org/ew/cases/EWHC/QB/1999/244.html>

Bunt v Tilley (2006) & *Ors* EWHC 407 (QB) available at

<http://www.bailii.org/ew/cases/EWHC/QB/2006/407.html>