

IT Law for FE and HE Senior Management

OTHER LEGAL ISSUES COVERED BY JISC LEGAL

Disability Discrimination:

The law prohibits your institution from discriminating against disabled persons, and requires your institution to make reasonable adjustments. These laws should be seen as drivers for positive action on accessibility generally. Ensure that your staff are aware of and are promoting accessibility in developing e-learning materials.

E-Commerce:

Selling goods (e.g. alumni merchandise) and services (e.g. courses) online is subject to regulations laying down certain information to be given, and certain procedures to be followed. This includes, for example, the right to cancel within seven working days. Ensure your institution's e-commerce scheme is compliant.

E-Marketing:

There are regulations designed to protect users from unwanted email marketing. These regulations extend to other forms of electronic communication too, such as text messaging. Ensure staff involved in marketing your institution understand and comply with these rules.

Keeping Up-to-Date

- Ensure at least one person in your institution is subscribed to receive the free monthly JISC Legal Newsletter (<http://www.jisclegal.ac.uk/newsletter.html>)
- The JISC Legal website contains further, more comprehensive information on each of the areas of law mentioned above. Make sure relevant members of your staff know about JISC Legal.
- We welcome email, web form and telephone enquiries from institutions - see: http://www.jisclegal.ac.uk/enquiry_form.html.



© JISC Legal. This paper may be copied with acknowledgement for educational non-commercial purposes only. No adaptation permitted without permission of JISC Legal.

IT Law for FE and HE Senior Management



This paper summarises the legal issues involved in the development and use of information and communication technologies (ICT) in learning and teaching,

to withdraw the course, with loss of fees, reputation and confidence. The right-holder may also sue for damages and prevent further use.

“What is JISC Legal?”

JISC Legal is an advisory service funded to prevent legal issues being a barrier to the development and use of ICT in UK further and higher education. We run regional and national staff development events, publish relevant guidance and a free monthly newsletter, and offer an enquiry service by e-mail, web form and telephone.

Tip:

your institution is likely to pay for a number of ‘blanket licences’ covering e.g. multiple photocopying (the CLA Licence), newspaper copying (the NLA Licence) and recording of broadcasts (the ERA Licence). Make sure these are being used, therefore ensuring that you are getting value for money out of them.

Further Information:

<http://www.jisclegal.ac.uk/ipr/IntellectualProperty.htm>

“We’ve got enough to worry about. We’re not really likely to be sued are we?”

In an increasingly litigious age, being sued or forced into a settlement is becoming more likely. Perhaps more importantly, quality inspections, your institution’s reputation and image, and building your IT system on a sound base are positive reasons for legal compliance.

“What issues can arise in respect to the use of ICT in a college or university?”

Whilst on a walk round your institution, you may wish to ask the questions on the following issues to ascertain how well your institution is doing.

COPYRIGHT

Issue:

around your institution, teaching staff will be making use of other people’s materials. This includes books, articles, software, images and other multimedia elements. The law gives the copyright holder the right to control copying, lending, broadcast, distribution and adaptation. Your staff can do these acts if they are the copyright owner (e.g. if they’ve written the materials themselves) or if they have the copyright holder’s permission (e.g. the CLA Photocopying Licence, for multiple paper copies).

Warning Signs:

open and uncontrolled use of scanners; excerpts from written work included in VLE materials without acknowledgement; general lack of awareness of copyright when talking with VLE authors, learning resource staff etc.

Worse Case:

a tutor has developed an online course, which has been marketed widely, attracting a large number of commercial fee-paying students. It comes to light that many of the materials are not copyright-cleared. The institution is forced

DATA PROTECTION

Issue:

your institution will typically store important personal information about students, staff and other contacts. This may include identity information, contact information, achievement information, monitoring information and financial information. The law requires your institution to ensure the accuracy, relevancy and the security of the information, insofar as it relates to living individuals.

Warning Signs:

student names and grades on notice boards; exam scripts left lying where they can be seen; student or personnel files left open on desks; security problems in relation to student information; lack of awareness of data protection issues amongst registry or secretariat staff.

Worse Case:

a petty thief steals a computer from the institution, and then discovers that a file on the computer contains student details including financial information (this has already happened at an American university). He sells this on to someone who knows how to exploit this. Several hundred current and former students suffer unauthorised withdrawals from their accounts. Your institution may be liable for the students’ financial loss, and will suffer loss of reputation and confidence.

Tip:

ensure that your institution presents data protection in a positive way. Ensure that students and staff understand why their data is collected, and give them reason to have confidence in the institutions ability to process personal data accurately and securely.

Further Information:

<http://www.jisclegal.ac.uk/dataprotection/dataprotection.htm>

ISP LIABILITY AND E-SECURITY

Issue:

your institution may be liable for illegal material hosted on its computers. This may be music files copied in breach of copyright, pornographic or defamatory material.

Warning Signs:

lack of a Notice and Takedown Policy for complaints about material; lack of a procedure for monitoring communications and user accounts.

Worse Case:

students downloaded obscene material onto your institution’s servers, and shared this with friends throughout the UK. IT staff had been alerted to this some time ago, but couldn’t find time to investigate, and are unsure of the legality of monitoring user accounts. The material is found by visiting school children using a computer lab. The institution risks prosecution, investigation of how it runs its IT provision, and serious loss of reputation.

Tip:

detering illegal content and illegal activity on your network will keep the costs of back-ups, storage and bandwidth down too.

Further Information:

<http://www.jisclegal.ac.uk/ispliability/ispliability.htm>

<http://www.jisclegal.ac.uk/eseurity/eseurity.htm>

FREEDOM OF INFORMATION

Issue:

your institution is required by law to respond within 20 days to requests for information held, subject to certain exceptions defined in the legislation.

Warning Signs:

no obvious reference to freedom of information (FOI) on your institution’s website; no member of staff designated FOI coordinator; no clear procedure for dealing with requests.

Worse Case:

a journalist makes a reasonable request for information which you cannot provide within the 20 days due to poor record management within your institution. As well as being costly in terms of storage space and wasted staff time searching for documents, your institution’s failure to respond results in an adverse decision from the Information Commissioner, and the portrayal of your institution as disorganised in the media.

Tip:

rather than seeing freedom of information law as imposing an inconvenient legal obligation, encourage your staff to see it as an opportunity to rationalise and streamline record keeping procedures throughout your institution.

Further information:

<http://www.jisclegal.ac.uk/freedomofinformation/freedomofinformation.htm>

