

Web2Rights

Use Cases

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1. Project creating course modules downloadable on mobile phones

A project has received funding to create course assessment modules which can be downloaded on to mobile phones, for use by students on placements. The project will be deploying and adapting open source software, proprietary software, pre-licensed content (such as content licensed under Creative Commons licences) and content for which permissions will be required from third parties. Development work on the project will be carried out by staff, freelance software developers and research students.

- What copyright issues do you think arise in this scenario?
- In what ways can the project monitor the permissions it has been granted in connection with this project?
- How might the project ensure compatibility between the delivery of the project outputs under open access/open source principles, and the permissions that have been granted for the use of third party material/software etc?
- What are the various options that might be pursued to ensure that the development work created by the various personnel working on the project can be reused?
- Are there any other risks concerning copyright that you can foresee with this project and if so, how might they be mitigated?

Within this scenario, there are various layers of copyright permissions could be required from third parties (such as publishers, artists, designers, performers etc). Some rights holders may be more ready to permit use of their content, such as those publishers given a “green light” in the Sherpa database.

Consortium Agreements are crucial to ensuring that there is a suitable framework in place regarding roles, responsibilities and rights of project partners. The project manager needs to express to signatories of Consortium Agreements what the project is really doing, including a communication of benefits and opportunities; otherwise there is the risk that negotiations for getting Consortium Agreements signed might take longer than the project lifespan.

Contracts need to be in place with all non-staff (such as third party contractors) to ensure that any content that they generate can be reused for the purposes of the project etc. Some technologies are viewed by rights holders as being more likely to encourage infringement than they really are - such as mobile phones. Mobile phones are just another platform of delivery and if anything, depending upon the specific programs and technology applied, the ability to reuse content received on mobiles is potentially more restrictive than content received via other platforms such as the internet.

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2. Reuse of photographs on a wiki originally sourced from Flickr

Dr J. has written a research paper on the specific effects of global warming on part of the coast-line of southern Britain. Within the paper Dr J. uses a photograph of the Dorset coast-line taken in the 1950s. The photograph was sourced from Flickr, although it was originally posted on Flickr without permission from the original photographer. The article by Dr. J. is made available under a Creative Commons Attribution Non Commercial No Derivative Licence through a wiki which forms a part of the website hosted at University Q. for research into global warming.

- Should the wiki be moderated? What are the pros and cons of doing so? If it should be moderated, who should have the responsibility for undertaking this task?
- If a site is not moderated, what are the various solutions that might be employed to mitigate the risks arising from the uploading of unauthorized content?

Ultimately, the photograph was used without authorization from the original photographer and therefore the terms of the CC licence under which it was made available are not valid. With regards to any posting of material, there should be some moderation as other rights issues (as above) as well as other legal issues such as defamation etc may also arise.

Within the context of this point, it is important to understand what is meant by “moderation”, how scalable this is and what the legal ramifications might be. For example, if active moderating and vetting rather than reliance upon notice and taken down, there may be the implication of being deemed to know about any possible legal issues that may arise and therefore potential liability. Other issues that were raised were:

What happens over the weekend and Christmas period etc and ensuring that there is the internal infrastructure to support the flexibility to delay posting of comments submitted over night and over Christmas period?

The role of self moderation so that others submitting content can bring to the attention of the site owners comments which they find to be infringing or inappropriate in any way. The BBC has established some good exemplars of this. Use of robust terms and conditions for submitting content, such as those established by The National Archives who have an open wiki "Your Archives" in which users can contribute in various ways, including, editing pre-existing pages and adding new content and guidance
<http://www.nationalarchives.gov.uk/default.htm>

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3. Shutting down of a Canadian music site hosting out-of-copyright music

In this case, although the site was compliant with copyright in Canada, where the duration of copyright is lifetime plus 50 years, the extra 20 years of copyright protection offered by European countries, the US etc. (where copyright lasts for lifetime plus 70 years) meant that whilst the site was legal in Canada, Universal Edition, a music publisher maintained that it infringed copyright elsewhere. According to Universal Edition, businesses must comply both with their local laws and with the requirements of any other jurisdiction where their site is accessible - in other words, the laws of virtually every country on earth.

- What are the potential wider ramifications of this for the dissemination of Web 2.0 technologies and content?
- Should we be bothered?
- Is Universal Edition's opinion legally sound?

If this interpretation is taken to be correct- there would be no dissemination activities at all within a web environment and Web2.0 would be stifled and not used. Ultimately, the consensus is that Universal Edition's stance is doubtful from a legal point of view as it is virtually impossible to abide by every jurisdiction.

At any event, it is important that such restrictions unduly exerted by rights holders are challenged. Options discussed included the value in hooking up with big companies such as Google which are willing to take risks and armed financially to challenge such issues, as well as working with organizations such as the Open Rights Group which defend cyber liberties.

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4. Copyright-related issues arising within “Second Life”

Rights issues might range from copies of real life works being created within Second Life without authorisation, to the use of software that makes it easy to copy in-game artefacts. Whilst some virtual worlds claim ownership and control of anything created in the game, Second Life acknowledges that players have copyright in their creations. For instance, players can sell (or refuse to sell) their in-game tchotchkes. Any creation on Second Life is subject to Second's Life Terms of Service which include perpetual licences to Linden Lab and users of the Service.

An open-source tool called CopyBot allows players to cruise around copying the objects sported by other players. Many SL players are upset by this, and are demanding action. Second Life's proprietors, Linden Labs, are trying to figure out what to do. They've ruled out eliminating third-party programs from Second Life, and are on record as refusing to become copyright enforcers for their community. They are offering temporarily to adjudicate on questions of infringement to see if they breach the Second Life Terms of Service, but are seeking better solutions, including reputation systems.

- Is it feasible, do you think, to control copying in virtual environments?
- Should game owners adjudicate infringements based upon terms of services that they put together?
- Are there any other solutions which might create a fairer and more realistic practice?

Copyright issues within Second Life are, as in the real world, business issues and relate to an investment resulting from people's time and input. However, at the same time, the virtual environment can be a more permissive environment in which business models and open community can co-exist. Second Life typifies rights issues that arise within the use of the Internet per se and in particular the cross applicability and relevance of specific jurisdictions.

“There may sometimes be questions about which jurisdiction's laws apply to a particular matter, and there can certainly be some enforcement issues, but statutes and case law have shown that national governments and courts do not take the view that just because something is done digitally, it is unregulated. Second Life and the conduct of people who inhabit it are undoubtedly subject to the law” David Naylor, Field Fisher Waterhouse LLP (as quoted in the Guardian's Digital Media Supplement 10/12/2007).

Control does not have to be technical, it can also be an ethical issue – by frowning upon certain activities and practices, this can result in these being viewed as culturally bad. At any rate, it is important to educate users about what is expected (and not expected) from

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them, which might be considered by the use of specific terms and conditions, as well as measures of possible enforcement. Other mechanisms of control include establishing proprietary models of ownership and then encouraging reuse under appropriate licences, or perhaps planting copyright-enforcing avatars!

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5. Rights issues encountered by JISC projects engaging with Web 2.0

Flourish

Key issues have included the resolution of privacy and data protection issues, and particularly those arising from private reflections

Tic Tocs

This project found it important to ensure that permission was sought from Publishers for the reuse of live feeds

Isthumus

In its use of social networking sites, this project was more concerned about defamation/privacy/data protection rather than IP and the potential risks to reputation. It was therefore important to create a balanced framework between user responsibilities and interaction in promoting the engagement of students with social networking sites such as Facebook. In this specific circumstance, a light touch was taken in creating a closed group without formal contractual agreements. Further people were not invited unless they had been on training. This decision, sought in consultation with JISC Legal, evolved around the need to consider balances, pragmatic disassociation and acceptable use policies (same as Facebook terms of use). Users aware of personal responsibility – those that did not join were not aware of responsibilities or chose not to abide by them.