Social Media: Friend or Foe?
Navigating the Legal Minefield Successfully

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Legal Disclaimer
Copyright is an incredibly labyrinthine area of law. Neither of the two authors of this work are copyright lawyers, and while advice given is from a best professional understanding standpoint it should not be regarded or construed as legal advice.

If you need to seek specific legal advice with respect to copyright you are advised to speak to the institutional legal representative in the first instance or consult a specialist lawyer.

In particular you are directed towards the far more comprehensive and specific guidance to legally using various social media tools provided by JISC Legal, links to which you will find in the references section of this booklet.

Terms of reuse
We would be remiss if we did not make it clear the terms under which material from this work may be reused. We have applied a Creative Commons Attribution-NonCommercial-ShareAlike 3.0 UK Licence (Creative Commons, 2011b). Please do share the link to this work on the Library Copyright pages (David Wilson Library, 2011), as the authors would welcome comment and insight for enhancing this work from University of Leicester staff, students and the social media using community.

Acknowledgements
The authors would like to thank the following for their input to the development of this resource. Chris Rice (Marketing and Communications, Leicester), JISC Legal and the various people over the social web we’ve spoken with while writing this booklet.
1. Introduction
Social media, networking and Web 2.0 in general has changed the way we communicate – both as an institution and as individuals. It gives us all the opportunity to engage in ongoing conversations with our students, faculty, staff, parents, alumni, colleagues, fans and friends about what is most important to them. It can extend the reach of our community, the visibility of our work and our engagement with our stakeholders. In part it is all about the audience and having a conversation; sharing, discussing and responding. Audiences on social media will vary according to the type of communication or the site. In particular journalists use social media as a means to identify news stories, so bear this in mind as well if you are concerned with publicising your work.

The essence of Web 2.0 and social media is the ability of any user to create, share and edit content in the public domain. It is in this open and public engagement that a variety of risks, challenges and potentially unrealised difficulties might lie in wait for the unsuspecting user. Thus while social media offers fast access to a vast array of research and teaching resources, it also delivers unparalleled opportunities to break the law, potentially dragging both you and our employer into trouble.

Overview
This booklet complements the staff development session Social Media, Friend or Foe: Navigating the legal minefield successfully. This session and booklet aims to help you stay on the straight and narrow, while still exploring and exploiting the fabulous teaching, learning and research augmentation opportunities that these resources provide. The booklet contains additional information on managing the risks associated with engaging with social media in your teaching, research or personal life with an especial focus on rights management. It will illustrate through worked real-world examples the best practice approaches that can be employed to minimise exposure to legal, personal and professional risk.

Talking the Talk
This booklet assumes that the reader is at least slightly familiar with using or is at least aware of the myriad of social networking platforms. It is not intended as an introduction to them (see other Staff Development courses). While it is hoped that this text is written in an accessible language, a Glossary is provided at the end of the booklet for some of the more niche terminology used throughout and you may find it handy to refer to as you read.

Feedback and Review
This booklet represents the first time the topic of social media, legality and safe usage have come together within a Staff Development course. As such this is very much a developing resource and session, and the authors welcome input and suggestions for enhancements to the material covered. At the same time the authors are open to invitations to re-run this training for interested groups of staff or students. Our contact details appear at the end of the booklet (see Further Help).
Key Fact: Social Media or Networking

In this booklet the terms *social networking* and *social media* have been used interchangeably to refer to the underlying platforms and interactions through which people communicate electronically.
Copyright 101
Breaching or infringing copyright is probably the biggest single risk that a user of social media runs (but see also The Risky, Risky World of Social Media). Copyrighted materials are all around us, and the University provides a variety of guidance and support in working with them (Johnson & Rowlett, 2011a). Before we turn to look at how social media overlaps and interacts with them, it is worth spending a few moments considering what comprises copyright, and some of the emerging alternate approaches to complete control of the outputs of intellectual endeavour.

Defining Copyright
In August 2011 the BBC got itself in a muddle when they re-used, without permission, various photo’s of the London riots, which had been uploaded to Twitter (Mabbett, 2011). They originally stated that such items could be reused as they were in the public domain. This is an interesting defence as the concept of public domain does not exist under UK legislation, items are either in or out of copyright. They soon revised this position to explain that they ‘make every effort to contact people who’ve taken photos’, but that was not always possible. It is worth noting that fair dealing (i.e. using a substantial amount of someone’s work, fully referenced) of any type of work EXCEPT photographs is not an infringement if it is used for the purposes of reporting current events.

Copyright in the UK is governed by the Copyright, Designs and Patents Act (1988). It provides legal protection for an author/creator, which allows them to control the way in which the work they have created is used. Copyright does not need to be claimed, it is implicit in the creation of any work – from a letter written to a friend through to work prepared for an academic text book.

The demands on existing copyright law are often changing and evolving over time especially in response to technological developments. However, in respect to social media there is to date a very limited body of case law to point to, and some judgements made to date have been somewhat logically questionable (Wireless 2011, Balasubrmani, 2011, TaylorWessing 2011). Suggestions have been made that judges perhaps need some serious updating in terms of their understanding of social media and web 2.0 as a whole, and only time will tell if these early cases are trail blazers for legislation or aberrant responses.

Naturally it is good academic practice to maintain an awareness of the variances and developments as they relate to your research, teaching and learning. Many new interpretations of existing law come through the opinions delivered by the legal process of the courts, and can sometimes result in dramatic changes; especially for new or previously uncertain areas of activities (e.g. the Internet, social media etc).

Rights & Rights Holders
The owner of copyright in a work is generally referred to as the rights holder, and unless another agreement is in effect, rights holders have sole discretion as to the use of their rights in their creation. Rights such as these can be loosely split into moral rights and economic rights. Economic rights can be assigned, transferred or sold by
the original rights holder of the work. However, moral rights cannot be transferred but they can be waived by
the creator if so wished.

In terms of social media you will often be reusing, sharing, linking to or adapting material created by other
people. Material in which others have a vested copyright is referred to as third party copyright material or
simply third party copyright. Whenever you are reusing work to which someone else owns the rights, unless it is
an insubstantial amount, or for the purposes of criticism and review, you must get permission from the rights
holder beforehand. Bear in mind this could take some time (weeks rather than days) and be explicit about how
you want to use their work.

The term work encompasses written material (including source codes), dramatic works, music, computer
programs, web sites, databases, sound recordings, films (including animation), broadcasts and published
editions of a work. Copyright of published written, dramatic and musical works lasts for 70 years after the death
of an author/creator. At the moment copyright in a sound recording is 50 years but the EU would like to raise
that to 70 years in all member states.

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### Key Fact: Economic and Moral Rights

**Economic rights** allow the rights holder to permit the reuse, performance, adaptation or conveyance to the public of the
original work. **Moral rights** are the intrinsic rights of the author to be identified as the creator of the work and for their
work not to be subjected to any derogatory treatment.

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### Creative Commons (cc) and Alternatives to Copyright

Creative Commons (CreativeCommons 2011a) is an organisation that provides licences which allow people to
make their work freely and openly accessible to others, under a clear and concise combination of terms. Such
work is said to reused under a Creative Commons licence. Creative Commons licences have had a legal status in
the UK for some time now. There are other open licence schemes for copyright, most notably the Copyleft (GNU
Project, 2009) approach. These can be a very useful tool to tag your own materials with if you want to
encourage reuse and sharing, but don’t want to be constantly approached for permission to reuse or to entirely
give away your economic rights.

Creative Commons licences (Educase 2007) are constructed from a number of ingredients from which you pick
and choose the flavour of your final licence. The main Creative Commons has a menu system that allows you to
work through how you wish your work to be reused, and provides licences that can be linked to or incorporated
into your documentation and websites. The four ingredients that go into making a Creative Commons licence
are shown below:
Table 1: Creative Commons License\(^1\) Ingredients

<table>
<thead>
<tr>
<th>Attribution (BY)</th>
<th>Share Alike (SA)</th>
<th>Non-Commercial (NC)</th>
<th>No Derivative Works (ND)</th>
</tr>
</thead>
<tbody>
<tr>
<td>You let others copy, distribute, display, and perform your copyrighted work — and derivative works based upon it — but only if they give credit the way you request.</td>
<td>You allow others to distribute derivative works only under a license identical to the license that governs your work.</td>
<td>You let others copy, distribute, display, and perform your work — and derivative works based upon it — but for non-commercial purposes only.</td>
<td>You let others copy, distribute, display, and perform only verbatim copies of your work, not derivative works based upon it.</td>
</tr>
</tbody>
</table>

From CreativeCommons.org, reused under a UK (cc)-BY 3.0 license

For example: If you wished to share an image and simply wanted people to acknowledge the source — choose an attribution licence [(cc)-BY licence].

If you wished to reuse some text shared under a [(cc)-BY-SA-NC licence] then you would be free to do so in a not-for-profit or educational manner. You would be required to both attribute as well as share your final product incorporating the item under exactly the same (cc) licence. This might well mean that you could NOT include it in a formal publication.

Conversely where works have been licensed for non-commercial purposes [(cc)-NC licence] only, if you wish to use material under this licence in a journal article or book, these are strictly speaking commercial enterprises and you would be strongly advised to seek permission from the rights holder before proceeding.

No Derivative Works [(cc)-ND licence] may sound almost as restrictive as normal copyright at first. However, the difference is that items tagged with and ND licence can still be reused in their entirety without seeking permission from the rights holder, they just cannot be adapted or incorporated into other works in part.

You can choose whether or not to allow people to make use of your work for commercial purposes, and whether they can adapt your work to create derivatives. In turn, you can re-use and/or include Creative Commons work in your teaching materials, depending on the licence specified.

Bear in mind that once a resource is made available under an open licence, you cannot retract it. You can remove the item and release it under a more restrictive licence, but anyone who downloaded the item whilst it was under the more open licence can continue to use it under that more open licence.

**Key Fact: The Right to Licence**

Creative Commons licences are a form of partial rights retention, where the rights holder can elect to allow reuse under predefined and internationally verified conditions. Many search engines include the ability to search for items shared under just such a licence.

\(^1\) As Creative Commons started in the US they use the American-English License spelling rather than the British-English licence
Employer Rights and Ownership Issues

It is worth thinking about who actually owns copyright in material you create in the course of your work, as this does affect who can use it and how. When an employee creates an item of intellectual endeavour in the course of their employment, be it a literary piece or a scholarly report, the default copyright position is that ‘The employer is the first owner of the copyright of literary, dramatic, musical or artistic work made on or after 1 July 1912’ (Padfield, T. 2007, 3rd edition Copyright for Archivists and Records Managers) unless there is a contract to the contrary.

Thus everything you create within the performance of your employment is owned by the University. This is advantageous in that it allows any other employee of the institution to use it within the confines of the University’s business; e.g. to present your work in a streamed lecture as part of a degree course. For example:

<table>
<thead>
<tr>
<th>Table 2: Employer Copyright &amp; Ownership</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Lecture notes read aloud on camera for a streamed lecture</strong></td>
</tr>
<tr>
<td>Created: In the course of employment</td>
</tr>
<tr>
<td>Rights holder: Employer (the University)</td>
</tr>
<tr>
<td>Reuse: Lecture notes can be reused by the institution’s members without permission. Recorded performance should be licensed for reuse under performance rights</td>
</tr>
</tbody>
</table>

However, decades of custom and practice have long allowed academics to assign the rights in their articles and other publications to publishers, and it would be a difficult thing for an institution to make a case against this de facto position. As (Padfield, 2007) states ‘The position in universities in particularly uncertain. In the past it was normal for universities to tacitly permit their academic staff to claim their own copyrights, giving them the freedom to conduct their research and publish the results.’

**Key Fact: Seeking Permission**

Remember, you can always contact the site or content owner’s directly to clarify rights related matters. For further guidance though consult the Library’s copyright pages or contact the Copyright Administrator.
3. Social Networking Legal Basics

In this section we will develop some of the themes in Section 2 and begin to explore the particular legal frameworks and considerations that especially relate to social media. As the University allows access to these resources it is important that all those using them should understand the risks, and best practice, approaches to using them.

Keeping it Legal, Keeping it Safe

The Semantic Web, Social Networking or Web 2 are the names often given to those cloud-based services and sites that encourage not just the hosting of content, but interaction with a broader and often global community, usually producing a collaborative output. In essence simply by using items in an open and interactive environment immediately takes you to a higher state of risk (see Oppenheim’s Risk Formula), which necessitates a higher level of caution in minimising any other risk elements.

Examples include social networking sites like Facebook, Twitter & FriendFeed, through to scholastic sites such as SlideShare, and even encompassing media sharing sites like YouTube, Vimeo and Flickr. However, as many of these operate in areas which did not exist when current copyright laws were developed, little case law exists to allow the formation of specific guidance, on using and reusing such content, which can make using such materials an elevated risk.

The use and confidence of staff in using social media sites continues to grow in education and business, and the issues around their safe and legal use are far more numerous and complex than can be covered in as brief a booklet as this one. While there are some clearly unsafe activities, legally much of social media usage, like many areas of rights law, can be regarded as being degrees of grey (Gaudin, 2009), rather than clearly black or white.

It should be noted that while this booklet endeavours to advocate the safest legal routes to engaging with social media, the only 100% sure-fire safe approach is to not make any use of it at all. However, both the authors make use of social media themselves in varying degrees so the advice here stems from a pro-engagement viewpoint.

Key Fact: The No Risk Approach
The only no risk approach to using social networking and media sites...is don’t. By their open nature there is always an element of some risk associated.

Not So Freely Available

Just because material is freely available doesn’t mean it is free from copyright. Check the terms and conditions of use on the site, or a copyright statement if there is one. If one isn’t visible then you must assume that materials are in copyright. Some sites are very clear on the rights situation of their hosted materials, often making use of Creative Commons and other open licensing schemes (Johnson & Rowlett, 2011).
Table 3: General Downloading and Reuse Rules of Thumb

<table>
<thead>
<tr>
<th>Permissible</th>
<th>Caution</th>
</tr>
</thead>
<tbody>
<tr>
<td>Generally you can download and/or print individual items for personal use.</td>
<td>Do not download works in their entirety or systematically, for example an entire journal issue.</td>
</tr>
<tr>
<td>Material on the web is usually copyright protected. In the absence of any clear guidance check the site’s terms and conditions.</td>
<td>Music, films and sound recordings are NOT covered by fair dealing for research and private study, only for the purposes of criticism and review.</td>
</tr>
<tr>
<td>The University Library provides many electronic journals, books and databases. These are all supplied subject to various publisher licence agreements.</td>
<td>Material on the web can be there illegally, for example pirated material. Do not download or link to this material, or use peer-to-peer file-sharing software.</td>
</tr>
<tr>
<td>The Creative Commons symbol helps identify sites that allow legal sharing and in some cases reuse.</td>
<td>Do not email or transfer legally downloaded material to anyone else. This includes sharing it via social media platforms.</td>
</tr>
<tr>
<td>The usual rules about copying an insubstantial amount or a substantial amount for the purposes of criticism, review or private study apply.</td>
<td>Excerpts from sites which have multiple contributors (e.g. a team twitter feed or a Wiki), each person could have a right of veto to the reuse.</td>
</tr>
<tr>
<td>You must adhere to the University’s IT Service Regulations.</td>
<td></td>
</tr>
</tbody>
</table>

YouTube material may include excerpts of films and music produced by others. In theory if taken to the nth degree tweeting excerpts from a live presentation could infringe the speaker’s copyright, if they haven’t given permission! Remember that unless a work states clearly to the contrary, then assume that you can only make a personal use of the materials. However, for teaching and other educational uses there are exceptions and various licenses that permit the safe and legal reuse of rights holders’ works. For a much more detailed exploration of these issues see (Social Networking and Media).

**Orphan Works**

Orphans works is the name given to any item in which copyright subsists, but where the rights holder(s) cannot be traced. Whilst many people think this applies to the majority of information on the web, you can usually trace a rights holder by looking at the sites terms and conditions, terms of use, or copyright policy. For items to be truly defined as orphan works you need to have taken a variety of steps to locate the rightsholder(s), which is often referred to as due diligence. This may involve you putting notices in local newspapers, relevant magazines or shop windows, or using sites like Firms out of Business (FOB) or The Watch files.

Another common type of potential orphan works in web 2.0 are avatars. You may engage in a conversation with someone in Second Life and never know who they truly are. If you want to re-use their comments in a blog you should attempt to get their permission, although as noted elsewhere if they fail to respond, and you have a reasonable expectation that they would not object, it would be a relatively low risk approach to proceed. Use in machinima or screen shots (as discussed) later, does not require permission.
Disclaimers and Accountability

It is often wise to make use of a disclaimer for all content and information shared in the social space. Some people add this information to their profiles, others add it as a note in each blog post; in the same way as many organisations now insist upon it in an email signature. However, while a disclaimer may add a modicum of legal protection and deniability it should be noted that the protection they offer under law is questionable. The recent twitter joke trial (The Guardian, 2011) and appeal demonstrates under UK law, just how far the legal protection of a disclaimer (that a comment shared was just a joke) currently offers. Doubtless similar future court cases may reverse or underscore such interpretations of law.

For material that is hosted or administered it may be far more advisable to embrace a strong and visible takedown policy than rely upon a disclaimer keeping you out of court. Or naturally declining to share any materials in which you suspect there may be vested third party rights that preclude sharing (see also Moderation Policies).

No social networking platform will be held responsible for the legal consequences of your uploading illicit content or sharing infringing copyrighted works. This is doubtless not only encoded in their disclaimers but also in the EULA (End User License Agreement) that users sign up to in order to make use of the site (Facebook 2011b).

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**Key Fact: Disclaimers**

Disclaimers can be a useful tool for denoting where content or comments shared should not be directly attributed to an organisational or individual’s position or points of view. However, their value as a robust legal defence is questionable.
4. The Risky, Risky World of Social Media

Hopefully you are already familiar with the concept of social networking, social media and Web 2.0. What you may be less familiar with are the potential risks that you expose yourself, and your colleagues, students and employers to through using it. By engaging with social media at all you have to accept that some risk is unavoidable. However, in this section we will try and unpick the legal risks that exist, their causes and the ways in which you can minimise your personal and professional exposure to them.

Managing Risk

All reuse of items that are the property of other rights holders is about managing the degrees of copyright infringement risk. This higher the risk you expose yourself and potentially the University to, the greater the possibility that a rights holder would be able to make a legitimate legal challenge in a court of law. A simple approach to the increasing risk is shown below:

<table>
<thead>
<tr>
<th>Degrees of Risk Exposure</th>
<th>Description</th>
</tr>
</thead>
</table>
| 🌻 No Risk 🌻            | • Reusing material entirely created and owned by yourself or the University (e.g. rights not transferred to a publisher)  
                        | • Reusing material made available under an open licence  
                        | • Reusing material for which you have sought and obtained specific written permission from the rights holder |
| 🌻 Low Risk 🌻          | • Posting a link to clearly infringing material  
                        | • Retweeting unsubstantiated rumours about an individual*  
                        | • Posting negative comments about an employer on an open social site |
| 🌻 Higher Risk 🌻       | • Reusing third party material in documents which are then distributed electronically on the Web  
                        | • Distributing copyright material electronically when you are unclear, or in breach of its copyright status ** |

* NLRB v AMR (2011) – an employee was allegedly fired for posting a negative comment about their employer on Facebook

** Morel (2011) – photographs posted by a photographer on Twitter were reused by news and photo agencies without permission/acknowledgement, which led to a judgment that “the provision that Twitter encourages and permits broad re-use of content, does not clearly confer a right on other users to re-use copyrighted postings” Judge William H. Pauley III

The increasing level of risk is an analogue scale, and as such it is not possible to say with absolute certainty how great a risk you are taking. A good rule of thumb is the greater the amount of material reused from a single source or the more significant the extract then the higher the legal risk you and the institution are exposed to. In the European Courts significant extracts lasting little more than 11 words have been judged to be copyright infringements (Case C-302/10).

In the same way a simple guide to sharing material through social networking channels might be as follows:
Table 5: Minimising Web 2.0 Risk

- Check the terms and conditions of any media-sharing site before you upload, they may make claims on your content under their terms of use.
- Only link to legal content e.g. BBC videos on the BBC’s Website or official YouTube channel.
- Do not share content to which you do not own the rights or you do have permission to share (third party rights).
- Respect other’s rights – comments made on your sites or profiles are normally owned by the those making them.
- Respect other’s privacy – consider if a conversation you just had private and not for further dissemination.

However, unless you solely focus on using items created and 100% owned by yourself or the institution in the course of your academic career then you will always be accepting a modicum of minor risk. Don’t panic! For the most part following the guidelines in this booklet will help ensure that you minimise as much copyright risk as is possible in modern academic practice.

Oppenheim’s Risk Formula

Prof Charles Oppenheim has suggested that a simple formula can be envisaged which helps to calculate your total risk exposure. This can be calculated by the multiplication together of the 4 major copyright risk factors. The values of the figures are arbitrary and this is very much a conceptual framework rather than a hard and fast rule. However, it can be applied to all kinds of activities beforehand in order to establish how risky it is for you (Kelly, 2006).

Table 6: Oppenheim’s Risk Formula

\[
\text{Total risk} = (\text{Illegality}) \times (\text{Discovery}) \times (\text{Litigiousness}) \times (\text{Fiscal Damage})
\]

For example placing a picture downloaded from a film studios web site onto an internally accessible page has a low discovery, and likely a low financial loss. However, it probably breaches the terms of the website usage and major corporations are known to sue for much less.

Contrast this with scanning the full text of a book you own and linking to the text from the front page of your department’s website. Likely this would be quite illegal and would be readily discovered and could be proved to damage the sales of the publisher. Factor in that most publishers would bring an action, and you can see that the risk formula would spit out a much higher level of total risk.

Key Fact: Openness and Risk

Social media intrinsically happens in the open environment of the internet. Open sharing immediately increases the risk exposure you are subjected to. Thus benefiting from social media means accepting an exposure to legal risk.
Liability

Used in this context liability is the overall legal risk you, or the organisation, are exposed to as a result of making use or sharing materials through social media. This is a key issue, that through sharing of infringing material you may bring not only yourself but the University into disrepute as well.

*e.g. Professor Quentin Quire is being streamed live on the University’s website to a conference in the USA. During his talk he uses three images which are unlicensed and makes several ill judged remarks about members of the faculty at the institution.*

In this example both Professor Quire and the University could be held to account for his actions by the rights holders and the named individuals; the Professor as the infringing agent and the institution through enabling the infringement by providing webcasting facilities. That the remarks were made at all increases the liability, and that they were made in an open medium broadcast across the web will confound and increase the total risk further.

Where material is shared or reused outside of permissions or licences, or defamatory remarks are made about an individual in the social space, the liability for both the originator of the remarks, the organisation within which they are based and the medium through which they are shared, all own a portion of the blame. We are concerned principally with the first two of these in this booklet, as doubtless the EULA for most social media sites have a disclaimer against legal action stemming from a user’s actions.

Passive Consumer vs Active Producer

Throughout most of this booklet we are concerned with reducing the risk as the active creator, originator or sharer of something in the social media realm. It may be however, that you consider yourself somewhat a passive consumer of social media; e.g. you watch YouTube videos but never comment or forward the links to other people. Alternatively you might simply download an image from a website and incorporate it into your slides unreferenced.

While these are intrinsically a low risk activity and may never be discovered, this does not mitigate the potential illicit nature of these acts, accessing as they do materials over the University Networks (*JANET*, 2006). The likelihood of discovery may be small, but this doesn’t diminish the fact that accessing illicit content or reusing it in contravention to copyright law could well be viewed as a breach of University regulations or at worst a criminal offence. As such exercise all due caution in your consummation as much as in your sharing.

Privacy

As you will have doubtless heard in the media (*Ahmed, 2011, Facebook, 2011*), what is shared in social networking spaces may not be as private as you first assumed. Given that some social sites are notorious for ongoing revisions to their EULA’s, even if you thought you were sure of the privacy of your shared content at one time, it doesn’t mean the same is true today. Whether such post-joining revisions have a strong legality is perhaps questionable, but you can be sure that most of these sites have lawyers on hand whom can demonstrate that they were entirely in their rights.

Users often assume that the social media environment offers a higher level of privacy than it actually does (*JISC* 2011). You wouldn’t write your name, birth date, address and telephone number on a bus shelter, but adding this information to a social network site becomes second nature to some people. This can mean that normally
sensible people can end up sharing otherwise sensitive personal information that puts them at risk of at worst identity theft or at best exploitation of this data by the social media site itself or its commercial partners. Even locking your microblogging account is no protection, if other non-locked/private users retweet your comments in the open. In *Baskerville v Daily Mail and Baskerville v Independent on Sunday* (Jordan, 2011) it was judged that the papers reproduction of Baskervilles tweets was not an invasion of privacy. The Press Complaints Commission concluded that as the Twitter stream was publicly accessible (not locked), Baskerville could reasonably expect her tweets to be retweeted, and they could not be deemed to be private. Some cases seem to indicate that material shared in a social network has an implicit rights-gifting aspect to it. As with all areas there are steps that can be taken to minimise exposure to risk.

In the same way people may share this information with you on social networking sites you host, and you must be careful to make use of it under correct data protection guidance (see Data Protection). Just because they shared this information for the purposes of registering on a course, does not make it a good idea to create a mashed up Google Map with this information embedded within it for all to see. Indeed this could be considered a data protection breach unless they had explicitly agreed to this usage granting you formal permission.

**Key Fact: Privacy**

Even if you have set your privileges to private on Facebook or a similar site, locked your twitter account and only share material within your Google+ circles, never, ever assume it will stay private. Never share anything illicit or defamatory in any social space, or it will come back to haunt you.
5. Platforms, Sites and Specific Issues

In this section we’re going to briefly examine some of the many kinds of social media and networking platforms that exist today and the ways in which people interact with them legally. It is by no means a comprehensive listing or consideration, but it should go some way to illustrating the particular risks and routes to safely using them as underlined by the discussions in the earlier half of this booklet.

Images and Photosharing Sites

It is possible to search the web for images made available under Creative Commons, or similar, sharing and reuse licences. Many search engines (e.g. Google advanced search) allow for the searching of resources tagged with reuse rights. Flickr, and other photosharing sites like it, are places where people can upload their own photos for viewing by anyone with an internet connection. Many take advantage of reuse licences, such as Creative Commons, to permit reuse by third parties under certain restrictions.

It is important to bear in mind that search engines are not infallible and you are advised to double check the displayed licence of any content located on the Internet in this manner before reuse. Also remember that while the uploader may denote a reuse status for an image, they may not actually own the rights in the first place to be able to waive any restrictions on their reuse. For example the rights to a personal photograph of a painting in a museum are probably at least in part owned by the painter or gallery itself. Even for original images check whether there is a consistency in the types of pictures uploaded by an individual, and how they look. Images which stand out in a collection by being too clean and professional looking may well have been produced by others. However, this is a very inexact science and you may well simply decide to take onboard a portion of risk and reuse a photo under these licence terms after all.

Commonly the terms of most licences will require you to include a copyright or attribution phrase along with the image. This may appear as follows:

[Photo title as given] licensed for re-use by [Owner’s Name/Flickr ID] under a [Type of] Creative Commons licence
In practice for an actual image\(^2\) this attribution and licence phrase might look like this:

![Image of fireworks]

_Fireworks in the night sky, licensed for re-use by Terri Rothwell under a Creative Commons BY-NC-SA licence._

However, the exact phrasing will likely be determined by the site’s terms and conditions so check there first. In addition it is good practice to also include a link to the image, as you would attribute any third party item. This helps people whom might also wish to reuse the image, or others by the creator, to track them back to the source.

**Sharing Images**

In practice when sharing an image, or any other online object, via a social platform, there might not actually be sufficient space to include such caveats and detailed attribution, for example when retweeting an image. In these circumstances it is good netiquette, and strongly advisable, to include at the very least an attribution to the handle of the individual who first made the image available. For example:

>[Bit.ly/A46Ad] Image of three swans swimming on the lake, via @ThomasPhotographer

There are numerous examples of case law where reuse of an image outside of permitted or licensed terms and conditions have successfully been brought to court (DiResta _et al_, 2011). As noted elsewhere simply because an image is on the open web does not invalidate its copyright; although some UK judges might disagree on this point. While the probability that an image you share through social networking will be discovered by its rights holder is currently low, the fiscal loss they may experience from your infringement may be variable and in all likelihood they may well have a viable case to bring against you. It is better practice to share the link to the image on the hosting site rather than to the image itself.

Reusing images under a site’s terms and conditions or defined licence is one way where you would be allowed to reuse a picture. Remember at all times that permissions and licences often dictate a limited scope of reuse for an image and that being granted permission to use it in one context is not _carte blanche_ to use, incorporate or share it as though you were the rights holder. The other acceptable route would be to seek written formal reuse permission from the rights holder to make use of the image. An exchange of emailed communication would be sufficient.

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\(^2\) This is actually MS Clipart, used under an educational licence
Microblogging
Microblogging, by which we mean short text like services like Yammer and Twitter is an area where is it very easy to rapidly fall afoul of the law. Derogatory and inflammatory comments made in essentially a public broadcast media do appear to be legally binding and actionable under the very limited UK case law to date (Benenson, 2010). In the same way that linking to illicit materials brings with it a portion of liability, so too would retweeting a link to an illicit site or resource.

If you are microblogging as a member of the University, it is important to make people aware of this. It is also advisable to have a disclaimer within your profile as the brevity of the microblogging format is rife with the possibility for miscommunication and tonal errors; that is it isn’t always clear to people when a comment may have been made in jest. An example short microblogging profile might look like:

@DrNickTaylor: Human evolutionary scientist and life sciences education in general. University of Leicester staff member posting in personal capacity.

Hyper-Linking and Deep Linking
The general rule on any links to external sites and their contents is never link to those containing illicit, illegal or infringing materials. This may be difficult to establish for some items such as multimedia works, as these often contain multiple kinds of rights. However, where it is clear that material is not being hosted or presented by the original creator, alarm bells should sound in your head. Best practice would be to not not share or link to it, to avoid being accused of facilitating and promoting access to infringing content.

Blogs (Weblogs)
Blogs are one of the most mature and well understood social media technologies, and stem from the latter half of the 20th Century; unlike most of these other sites which are developments of the 21st Century. Blogging or writing a blog post within the confines of your day to day work counts as a literary creation in the course of your employment. As such the rights are normally owned by your organisation, which allows for easy reuse by any other member of the University.

However, comments made by other individuals on your posts remain the property of those making them. If you wish to share comments made on a blog post as a bare minimum you should make it plain in the post that that you will share them in some other forum. The further you seek to publish them, the more likely it is that seeking formal permission from the commentators would be a strongly advisable step.
As with most social media platforms it is often important to know if the host for your blog puts any further requirements or restrictions on your content under their terms of use. Some people download and run blogs on local servers making the content subject to local rules and regulations, on top of the legal ones. Others run their blogs on hosted or cloud services to get around these additional constraints, but are subject to the regulations of their hosting platform. However, common to every good blogging hosted service like WordPress or Blogger is the fact that no claim is made over the IPR of content legitimately added by users.

At the same time there is clear expectation that no infringing material is uploaded or reused. Here the fair dealing defence is as good a one to apply as it is with any written work. Reusing text or images for the purposes of criticism and review within your blog is therefore potentially a lower risk activity. However, full attribution is essential and as always if you believe you are making a substantial use of materials for purposes not covered by fair dealing, or wish to use items that are clearly copyrighted by litigious corporations it is essential that you seek formal permission to reuse them.

Blogs usually have spaces for a full profile of who you are, the purpose of the blog and a guide to the kind of material that is likely to be posted. Additionally if you are blogging as a member of the University, it is important to make people aware of this. It is also advisable to have a disclaimer within your profile to clarify the role within which you are posting. For example a line within your profile might read:

> While I work at the University of Leicester, this blog is my personal reflections on developments in community media science. Nothing that I post here should be taken as an official position or statement from the University. If you have any concerns with the material posted here, please contact me at the email address above.

**Photoblogs**

Photo (often abbreviated to foto) blogs, a subset of blogs like Blipfoto, are sites where an image is shared and then discussed in varying degrees of detail. The normal rules for sharing images within copyright apply here, and as before unless the site licence makes a claim on the rights of content ownership remains the property of the creator. These sites are latecomers to the blogging scene, and perhaps in part as a reaction to issues over ownership and privacy on sites such as Facebook, tend to be focussed on allowing the creator to retain virtually all the rights within their posts. See for example these extracts from Blipfoto’s terms of use (Blipfoto, 2011)

> ‘We do not claim or have ownership in any of the materials which you submit, post or display on or through our site. You retain ownership in such materials and you are free at all times to use your own materials as you see fit.’

However, there are some rights that Blipfoto retain:

> ‘You hereby grant to us a non-exclusive, perpetual, worldwide and free licence to use, publish, display, reproduce, modify and distribute such materials on and through our site and for the promotion, marketing and advertising of us and our site (and to permit others to do the same on our behalf).’
Contrast this with Facebook’s terms and conditions (Facebook, 2011), and note the lack of the phrase “royalty free”, indicating that commercial rights are clearly retained by the author, though the owners of Blipfoto clearly need to able to have permission to share the images of the site would not function.

**Key Fact: Post Ownership**

Your blog posts may be owned by your employer, but all comments are the property of those making them. Reuse with permission only.

### Wikis

Wikis could be regarded in many respects as acting like a subset of blogs, in that they are substantial bodies of interlinked editable text and media. However, unlike blogs where a post generally has a single author and who could ‘be identified as the owner of the reproduction rights, wikis are by their nature collaborative creations. Generally the owners of these sites have clearly defined rights statements defining where the ownership of any copyright in contribution lies. Some sites require registration, and hence tacit agreement with these terms. For other wikis that allow anonymous contributions these licence terms are likely to be listed as implicitly agreed with if no active agreement to abide by them is clicked on. This may be a riskier approach if you are the wiki owner, it may increase the ease of contributions but it diminishes the legal defence were someone to challenge you over their perceived retained rights or exploited contributions.

One of the best known wikis is Wikipedia, which has an excellent and very clear page detailing the rights retained and assigned through contributors engagement with its content (Wikimedia, 2011). A key passage is:

“...all users contributing to Wikimedia projects are required to grant broad permissions to the general public to re-distribute and re-use their contributions freely, as long as the use is attributed and the same freedom to re-use and re-distribute applies to any derivative works. Therefore, for any text you hold the copyright to, by submitting it, you agree to license it under the Creative Commons Attribution-ShareAlike 3.0 Unported License.”

Attribution is generally through the tracking of added material in the history of each page’s content. If you are the owner of a wiki, or are considering encouraging your students to create one as part of their course you may need to consider other content and management issues as well.

**Key Fact: Wiki Reuse Permissions**

If you wish to reuse material from a wiki you should ideally get permissions from all contributors, or at least someone who has the authority to grant permission on their behalf.
Facebook and Social Community Sites

Aside from the previously discussed privacy issues with Facebook, and to a lesser degree with Bebo, the biggest problem with Facebook is hidden in their EULA with respect to user uploaded content. Facebook’s terms of useage (Facebook, 2011) state:

‘You own all of the content and information you post on Facebook, and you can control how it is shared through your privacy and application settings’

However, the next line of the terms that all users have unwittingly agreed to reads:

‘For content that is covered by intellectual property rights, like photos and videos (IP content), you specifically give us the following permission, subject to your privacy and application settings: you grant us a non-exclusive, transferable, sub-licensable, royalty-free, worldwide license to use any IP content that you post on or in connection with Facebook (IP License). This IP License ends when you delete your IP content or your account unless your content has been shared with others, and they have not deleted it.’

Occasionally though you will find that there are conflicting terms and conditions – take this further extract from Facebook’s EULA which appears to contradict this term:

‘While you are allowing us to use the information we receive about you, you always own all of your information. Your trust is important to us, which is why we don't share information we receive about you with others unless we have:

- received your permission;
- given you notice, such as by telling you about it in this policy; or
- removed your name or any other personally identifying information from it.’

Essentially hidden within this morass of text is the fact that Facebook has given itself a right to reuse any and all of your content (images, photos, comments etc) in any way they like; unless you delete it or your account. This is something you may need to think about quite firmly if you manage for example a departmental Facebook page populated with images and video drawn from the University’s output. It may well be that gifting Facebook irrevocable rights to make use of these in their advertising programmes is likely something you want to avoid. Even worse you may upload something of commercial value that might well breach the terms and conditions of any funder’s licence to use it; increasing your liability considerably.

Key Fact: Social Sites and Licensed Material

Carefully check what rights you retain and which you give away to any uploaded material on sites like Facebook and Bebo. You may unwittingly give away valuable IPR or consent to its usage in a less than suitable manner.

Second Life and Multiuser Environments

Linden Labs Second Life is a venerable social media platform beloved by some, and loathed by others. No matter what your personal opinion it is an excellent example of how a social media site can incorporate clear rights guidance. Virtually all the objects that avatars in Second Life interact with, wear or inhabit are created by the users of the software. As their EULA states (Linden Labs, 2010) users “retain any and all Intellectual Property Rights in Content you submit to the Service”, although it also notes that their licence also covers the granting of
certain specific rights for reuse to the owners of the service themselves. Likewise there is an expectation that the rights of other users in their creations is retained by them, which forms a strong part of the system’s virtual economy in terms of trade in replicas (i.e. items can be bought and sold, transferring rights).

Like many computer games today, the owners of this software platform encourage development of their content under clearly defined licences and tools. Not surprisingly the Second Life EULA therefore has an exception for the use of third party materials to be used in machinima and snap shots. In this way incorporating video footage from Second Life of your avatar making use of multiple objects created by others into a lecture or uploaded to YouTube would be quite permissible (Linden Labs, 2011).

That said there is nothing specific set out in law regarding the validity of permissions granted by avatars. If you have no reason to suspect that they should not grant you permission then you are usually ok to proceed. For example if they post comments as part of an open, online discussion then there is a reasonable expectation that their comments will be seen by a variety of people. If you are seeking permission to use something an avatar claims to own or have made, and this ownership or creative ability seems unlikely, it is wise to exercise caution and ask for permission.

Other multiuser interactive avatar driven persistent worlds, or MMORPGs (massively multiplayer online role-playing games), may well have considerably different modification (modding) and reuse rules. Thus what is permissible and encouraged in Second Life may not be permissible in World of Warcraft.

Mixing and Mashups
Mashups within social media are popular, be they overlaying audio files on top of video or merging together disparate multimedia sources into a new entity. They are an especially complex area of copyright law given the multiple items and layers of rights associated within them, as well as the consideration of whether a mashup constitutes a new copyrightable object under law itself. Thus it is likely that the creation of a mashed up object will expose the creator, and any who share it, to at least a moderate level of copyright risk and overall liability.

Some creators and rights holders are keen for people to reuse their owned content and make them explicitly available under appropriate licenses for reuse. However, many others are quite litigious about even non-commercial or not-for-profit usage. In the US, First Amendment (Free Speech) rights are often called upon as a defence that protects mash-up creators from legal challenges. Unfortunately in the UK no such rights exist, which makes the proposition of mashing up considerably more risky.
Some creators get around this issue by using social media domains based in the US, for example YouTube, as currently legislation covers the point of hosting not the site of upload. There have been suggestions that this situation will be revised so that it is the point of upload or download of the material where the infringement can be seen to have taken place not solely the hosted location of the content itself. On the other hand many vocal opponents to such a move have suggested that this forms a kind of anti-technology intellectual censorship and is inappropriate in a modern networked society.

Which side prevails only time will tell, but it does mean that any such work carried out or shared on behalf of the University should be with extreme caution. There is not space to go into these issues in greater depth in this booklet but as always wherever possible permission should be sought from the rights holders of the original objects used.

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**Key Fact: Mashing Up and Reuse**

Mash ups are generally made up of objects with multiple rights holders, and especial care should be exercised to ensure that no licenses or laws are breached in their creation.

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**Streaming and Recording Lectures**

As previously mentioned streaming a lecture live to the web is far more open in terms of raised risks than simply recording one that might be mounted on a secure website. But in terms of social media we are more concerned with the webcast or broadcast of these kinds of events in a synchronous or asynchronous manner. As noted below the rights in a streamed lecture lie at least in part with the lecturer (AKA the ‘performer’), as well as in the rights holder for any material shown in their slides. Assuming as the performer you are using material you have entirely created or if you are only including material for the purposes of criticism and review then there should be no concerns. Streaming a lecture or placing a recording on YouTube or similar video sharing site is a higher degree of openness of access, and hence discovery and therefore overall risk if anything infringing or illicit is included.

If your lecture will include third-party copyright materials for purposes other than criticism and review (images, audio or video elements for example) then permissions should be sought not solely to incorporate them in your slides but to also broadcast your slides in this manner. It may be that the local licenses allow for the showing of these materials locally, and even over the internet to members of the University. However, the same licenses may preclude their being viewed over the internet by people external to the institution. If you are filming an external speaker, as a non-employee it would be wise to seek their formal permission to stream the session. There are a variety of licenses such as the one in the appendix (see Appendix ) that you may find useful to reuse or adapt in terms of obtaining the rights from a speaker to represent their performance on video. This example clearly ensures that all rights for reuse and adaptation in a video performance become your property, which greatly reduces the difficulty in sharing the material.

**Performance Rights**

A performer retains certain rights in their performance that are not ordinarily claimed by contracts of employment. While lectures are not explicitly labelled as performance within the acts, it is arguable that they are, comprising as they do a live communication of concepts, information and often opinions. Therefore while it might not be considered 100% essential, it is still advisable to reduce any risk by ensuring that an individual who is recorded or streamed performing a talk signs an appropriate licence or release beforehand (Kamerabooks.com, 2006 and Appendix B).
Audience members are generally incidental to a streaming of a lecture and so explicit permission is not required from them. However, a good practice tip is to ensure that they are aware that any session will be recorded and transmitted by announcements before the start and signs at the entrances to the room. There should also be part of the room set aside that will not appear on video, for those whom wish to attend but wish to decline to appear visually online.

**Educational Recording Agency (ERA)**
This licence permits staff at educational establishments to record, for non-commercial educational purposes, broadcast output of Educational Recording Agency’s (ERA) Members. Materials can be edited into clips, providing that they do not substantially change the nature of the programme. All copies of broadcasts must be labelled with the date of broadcast, title, and broadcast channel. AVS Media, via IT Services, can make and provide ERA compliant materials.

Note that use of ERA recorded material within Blackboard is currently restricted to on-campus only, the licence does not permit access off site (ie. via social media sites). The use of Open University programmes does not come under the ERA licence, is subject to different restrictions, and does bear a cost. See the AVS Web pages or contact them for further advice and assistance. You might also wish to consult the slides from Chris Willmott’s Staff Development workshop slides (Willmott, 2011).

**Audio and Podcasts**
Sound recordings are an exception to the Section 11(2) of the CDPA (1988). This means that if you were to record yourself giving a lecture or talk then the rights are probably owned by yourself and not your employer. However, there is some disagreement on whether or not these do actually fall under employer rights in terms of someone else reusing the audio file within the same institution. As always it is good practice to seek permission from the speaker themselves in writing before reusing the recording.

There are a variety of external sites, such as PodBean, that can mount your podcasts in a blog-like format. As always it is advisable to include a general copyright notice, like blogs, on the account as well as for any individual podcasts mounted. As with other social media sites do also check what rights are retained as a term of usage by the site owners for any of your content uploaded as you may be unknowingly gifting reuse rights away to another organisation.

As mentioned above, reusing audio within a podcast should be either under a licence or where permission has been granted. Reusing commercial audio, say a pop song, without such permission to underscore your podcast will likely result in your infringing copyright and is not advisable. Sources of materials shared under appropriate licences like Creative Commons can be found through sites like the Internet Archive (Internet Archive, 2011). In addition some commercial audio and video editing software packages come with onboard licence free audio or machine generated music that can be used under the terms of the software licence.

Sound recording rights currently last 50 years after a recording, or 50 years after the year of first release (if it is released). However, an EU directive extending the term of these rights to 70 years was issued in September 2011 (BBC News, 2011a; Kent, 2011). As such, all member countries are now required to amend their domestic copyright laws to comply with this. However, the UK has to date not yet introduced this modification.
Web Scraping
Scraping, also known as web harvesting and data extraction (Wikipedia, 2011a) is the reuse of large chunks of other people’s materials and using them as you own. For some reason this has been especially prevalent in the blogging world in recent years with whole blog posts being reposted on other often commercial sites without any permission being sought. This seems to fall under the common fallacy that everything on the internet is somehow free from copyright.

In many respects you are more likely to be scraped yourself, so any reuse within your social media sites of other people’s copyrighted work as discussed above would be legally very ill-advised. Some sites actually will help with detection, for example WordPress blogs operate a ping-back service that reports such activity to their owners. If you do become aware of having content being scraped you should immediately challenge the owner of the scraping site to remove the content. As discussed earlier they would be then required to remove their infringing content or risk exposing themselves to a greater liability. If they do decline to remove your content, then this would be an advisable point at which to discuss this matter further with the University’s legal advisor.

Content and File Sharing
Sites explicitly set up to share content have a somewhat unsavoury reputation in the press and are generally on the fringes between the legal and the illicit. While a portion of these reactions are media hyperbole (Williams, 2011) some of it is quite justifiable (Goodin, 2011). Sites like the Pirate Bay can be an easy way to share files to anyone with torrenting software installed, they are also loaded with copious amounts of illicit material that should not under any circumstances be downloaded or engaged with on University machines or accounts. While it is possible to mount files for sharing with others, along with comments from other users; there is usually no privacy and anyone will be to access and then redistribute your content easily; even if you place a copyright notice on it. Even a password protected zipped archive file on these sites will likely not prove a strong deterrent or barrier for many torrenting site users.

Over and above this, due to their illicit contents many of these sites are routinely black-flagged by organisations, including the University and access may well be blocked to begin with. In addition spikes in network traffic uploading and downloading to these sites can also be flagged within IT Services and lead to some awkward questions about contravention of institutional ICT policies; even if your use was genuinely legal. It is perhaps advisable to seek an alternative route to sharing files.

As with scraping, if you become aware of file sharing of the University’s IPR on these sites, this should be reported to the Information Assurance Office in the first instance; although notably once content becomes available in this way it is extremely difficult to completely redact it.
6. Facilitating Use of Social Media

In the previous section we’ve illustrated a range of social media platforms and some of the risks associated with using them. The focus has been largely on the concept of you yourself being the primary user. But what if you want to make use of these tools with groups of your students or colleagues? In these cases there are additional concerns and requirements that fall upon your shoulders as legally, by requiring people to use these resources, you take on a portion of the responsibility and potentially the liability too for any misuse or abuse of the facilities. This duty of care should not be entered into lightly, and it is worth bearing in mind that against the benefits there is a strong need for moderation, oversight, as well as legal compliance in their use.

Data Protection

If you are responsible for a site or expect your students or colleagues to make use of a site on which they will share any information that is uniquely attributable to them, then you must consider the data protection guidance from the University (University of Leicester(a)). The Data Protection Act (1998) allows individuals to control how information about them is used. For example recording individuals whom are individually identifiable can be considered to be processing and making use of their personal data. As such it must only be done with the full concept and awareness of the participants, and in line with all data protection principles.

While the subject of a streamed lecture should have signed a performance licence (see Streaming and Recording Lectures) the audience must at the very least be made aware that the lecture is being streamed, to whom it will be available and the reasons behind it being made available in such a way. Make an announcement before the recording begins and also include printed notices at the entrances and in any programme of events giving prior warning; so that if they wish to object they can either remove themselves from the venue or sit in designated non-broadcasted areas of the room.

Whilst many of us know the basics of the Data Protection Act (DPA), it might come as a surprise to those who have embraced cloud computing that personal data such as that covered by the act should not be moved outside the EEA, unless the recipient country has an ‘adequate’ level of protection themselves, and that data held in a ‘cloud’ is often moved around the world, albeit temporarily, to maximise system efficiency.

Moderation Policies

Moderation in all things is a good maxim to follow in the world of social media. In terms of keeping things legal and mitigating risk there is a need to exercise both self control over what we post (see University Social Media Policy) and what others post in spaces over which we have authority or interaction as members of the University. Services such as bulletin boards (BBS) and chans, have functioned successfully for years due to the human agency of moderation, ensuring that illicit material is taken down and that unruly participants brought to heel or banned outright from participation.

Moderation does not need to be heavy handed, in most cases it simply illustrates the need to make your community of users aware of what the guidelines are in terms of acceptable and unacceptable content. For the most part the content your users may share is unlikely to be out and out illegal, but may be ill advised. Again referring them to the University’s policy on using ICT and social media is often the best step (University of Leicester, 2005 and 2011). However, where something is clearly infringing or outright illegal then a takedown should be enacted immediately.
Copyright Infringement

Where online infringement exists and has been identified as such it should be immediately removed from the online environment in order to reduce liability. This will not entirely mitigate all risk, and if you are the poster of the work there remains a small possibility that someone will take matters further. However, by removing the offending material immediately on challenge you have taken steps to reduce the total risk level. For example Yahoo! Italia was initially deemed by the Court of Rome to be liable for copyright infringement as it had been made aware of infringing materials and failed to remove it. However, this ruling was then later overturned (Società Italiana Brevetti, 2011)

It should be noted that tweeting or posting a link to illicit material via social media can be considered to be facilitating its sharing and thus making you complicit in its illegality. Being unaware it was illegal might help salve your conscious, but wouldn’t be seen as an adequate defence in a court of law. Once again if you become aware that a link shared infringed copyright or other laws you should take every step possible to remove the link from whatever sources or platforms you have shared it through.

Thus it is a better approach to only share links or material in which you are sure that no copyright infringement exists.

Defamatory Content

Most social media does not have any barriers as to what can or will be shared. While this does help to propagate the flowing and dynamic exchange of ideas and options, at the same time it is possible for your comments to be misinterpreted. While for the most part it is a function of electronic communication to appear more abrupt or cutting than one might possibly intend to be; for example with tweets limited to 140 characters and lacking the emotional overtones of voice it is very easy to unintentionally become at cross purposes and words with other social networkers.

You may also encounter active trolls or griefers whom would like nothing more than to provoke a flame war and torrent of anguish in the social channels. The authors can vouch that it can be an unsettling experience to be on the receiving end of such an assault! Thus it can be a fine line to walk in-between facilitating free communication and taking steps to guard against such torrents of abuse. Having a thick skin can go a long way, but even the best of us have our limits (see Bullying below).

Beyond this there are those comments that creep into the legal realm of defamation of character, which through being shared in the public domain are immediately far more legally liable than spoken conversation among friends. For yourself the maxim of never say anything in a social networking space you’d never loudly announce on a crowded train of strangers can be a useful caveat (see Appendix for some other considerations).

It is worth noting that even those tweeters who post anonymously are not outside the law’s reach. Recently South Tyneside council won a court case requiring Twitter to release the details of account holders who had been making unfounded allegations about some of the Council’s members (BBC News, 2011b). However, the law is limited in its ability to realistically prostitute large scale social media legal infringement, such as that displayed with the ‘mass civil disobedience’ retweeting of the original, airport bombing joke tweet that landed Paul Chambers in court. (Shaikh, 2010)
In terms of social spaces you are using and are able to moderate, such as blog comments, the safest option is to require all commentators to register first and to manually approve each comment, or just the first time they make a comment. This makes commentators more trackable and attributable for what they say in this medium. However, some might argue that this reduces the immediacy of the social networking medium and the flow of conversations on it, so it is a decision you may need to consider carefully.

A careful policing of comments, likes, tweets etc and a healthy use of the delete or flag key are good options. Naturally if something clearly in breach of the institution’s computing, or outside your own social networking, policies (i.e. illicit, illegal or defamatory material) is posted to a space over which you have control then it is best to exercise your takedown policy immediately. There is no reason why after some debate with the commenter it might not be suitable for restoration. It is best to err on the side of caution, before someone takes serious notice, or worse personal offence.

**Bullying and Harassment**

It is an unfortunate truth that some individuals may experience unwanted side effects of engaging with social media. This can range from being on the end of a stinging rebuttal to a blog post by an irate academic through to far more serious instances of victimisation. It may be that this is a result of some naivety on the part of the victim in sharing content online that they would have been better advised to restrict; for example impolitic or borderline tasteful images. If this is within an environment that you moderate then take steps to enforce policies of good practice and have the images removed. This can of course be harder to achieve if the host is a commercial platform like Facebook; although it is notable that these services do have the ability to flag inappropriate content.

However, what happens if the individual feels the target of unwanted attention? Under the Harassment Act (1997) this could be a criminal offence in England and Wales. Under Scottish common law this could be considered a Breach of the Peace. In these circumstances it is advisable to report the matter to the proper legal authorities, in most cases the police and the University Lawyer, and let them handle it from there. You may want to retain the offensive material as evidence of the harassment; although this may extend the upset of the victim. It is best to take the advice of the proper legal authorities on this matter at the earliest possible juncture.

**Accessibility**

As with all things in education the Equality Act (2010) requires that reasonable adjustments should be made whenever possible for those users who might otherwise suffer substantial disadvantages over their peers. This means that if you provide information via social media, or to enable interaction, you must provide alternatives or appropriate workarounds to such individuals. It is considered advisable if you are proactive in this regard and consider how users with any accessibility issues will be assisted before any requirement to use such resources comes into play. The AccessAbility Office in the David Wilson Library can provide you with further guidance and advice in this respect.
7. Best Practice

In the following section we shall try and look at some overarching best and good practice rules to follow. These include some guidance from the University’s Marketing Communications Office on the standards all members of the institution engaging with social media should engage with.

Policies and Social Media

As has been touched on throughout this booklet it is advisable to have policies in place with regard to social media and shared content. Coupled with technological safeguards and support mechanisms for when you need advice, they can be the most powerful approach to ensuring that you stay legal. It should be noted that all use of social media from a University computer or over the networks falls under the ITS and JANET rules for conduct and correct use (*ITS, 2011 & JANET, 2011*). In particular with respect to legally using social media:

Table 7: JANET Policy - Unacceptable usage includes:

- 10. Creation or transmission of material with the intent to cause annoyance, inconvenience or needless anxiety.
- 11. Creation or transmission of material with the intent to defraud.
- 12. Creation or transmission of defamatory material.
- 13. Creation or transmission of material such that this infringes the copyright of another person.

If you intend to make use of social media as part of your employment, or expect your students to do so, it is well worth taking a few minutes to read these rules and reflect on how they might impact on your anticipated usage. You might also want to consult the JISC Legal guidelines (*Appendix B*) and advice from Marketing and Communications (*University Social Media Policy*) before you start.

Takedown Policy and Procedures

If an infringement or increase in liability is identified then it is very important that a procedure is in place that details what needs to be done in response, generally referred to as a takedown policy. Having a takedown statement, which is clearly visible and summarises the key points of the policy is one step towards providing peace of mind to anyone who believes that you may have infringed their rights.

For example the takedown statement for the Leicester Research Archive is:

*The LRA seeks to provide a permanent archive of research publications including: articles, book chapters, theses, reports, conference papers, and small databases. Items are only removed under very specific circumstances. Contact us in writing to make a request.*

Making clear the procedure and responsibility that lies behind the takedown policy is a very important step in reducing the risk and any subsequent liability. It is especially important for any social site you host locally or moderate, that responsibility for reacting to challenges in the takedown procedure is shared, as widely as possible within your team. The longer an infringement of which you have been notified remains online, the greater the legal liability you are exposing yourself and the organisation to. In general terms the key elements of any good takedown policy include:
Table 8: Takedown Policy Elements

- Visible takedown statement including key contacts.
- Initial reaction to a challenge – usually taking down any potentially infringing material without question and response to challenger.
- Chain of responsibility and accountability.
- Degree of consultation and review following initial response.
- Normal resolution and outcomes, including where overall responsibility lies for final decision.
- How all stakeholders in the process will be kept informed.
- Review cycle for the policy itself (often biannually).

The procedures and full policy need not be made public, although you may find it offers certain advantages in terms of accountability and response. As a bare minimum the publically visible statement must clearly indicate how the moderators or site owners can be reached.

University Social Media Policy

Social media presents an opportunity but also a challenge for brand and reputation management. For this reason, policies and guidelines exist outlining the rules when engaging in social media on behalf of the University. These are in the process of being approved and will be launched in the near future. The following guidance adapted from the University Marketing Communications Office is intended to help the institution mitigate against the risks but also make the most of the opportunities that social media presents. It is relevant for members of the University posting in the capacity of a University member and those posting officially on behalf of the University (Pennack, 2010).

Table 9: Marketing Social Media Guidance

- Be a scout and let Marketing know about anything you think is particularly significant – either positive or negative.
- Be aware of data protection: do not post confidential information about University students, employees, alumni or partners.
- Be mindful of copyright and intellectual property rights of others and the University.
- Become familiar with the terms of service and policies of sites and networks in which you participate. If you make a mistake admit it, correct it, modify it; be honest about it.
- Get the facts straight and review content before posting – check for grammatical and spelling errors.
- Posts on social media sites should be professional and respectful in tone. If you are posting on behalf of the University, or even in the capacity of a member of the University, what you say will reflect on the University’s reputation.
- State that you work at the University if posting in an official capacity, or in relation to your work at Leicester.
- The internet is permanent and word spreads fast. If you wouldn’t publish it on the website or say it to the media then don’t post it.
- Use of the University logo effectively endorses a page, blog, comment or tweet. The logo should only be used where the University has an official presence on the internet.
- If you want to establish an official University presence in social media you should speak with someone in the Division of Marketing and Communications first for guidance on house style and other standards.
If posting on an official University social media presence you are representing the University and as a representative have a responsibility that your communications are appropriate (for the audience and in keeping with the University’s values), accurate, respectful of others and the work that the University does. To get the most out of your social media usage it is may help to bear a few final points in mind:

Table 10: Optimising Social Media Communication

| Have a plan | • Consider your message, audience and goal. Have a plan for maintaining your social media communications.  
|            | • Where does your social media communications fit within the broader communications plan? |
| Content is king | • What would motivate your audience to respond positively and share your content with others?  
|              | • Monitor and evaluate which content, or posts, receive the most interactions. This will enable you to identify great content for future use.  
|              | • If you create multimedia to post have it reviewed by Multimedia Services first. |
| Tone of posts | • Social media communications are on the whole more informal than traditional forms of communication, but remember you are representing the University’s ‘voice’.  
|              | • Write in the first and second person, in the active voice, encourage conversation, be approachable in tone.  
|              | • It might be appropriate to be clever (in a witty sense), but not flippant or jokey. |
| Responding to negativity | • If in any doubt please seek advice about how to respond, particularly if there is a potential significant impact on University reputation. Contact the Marketing Communications Office in the first instance. |
| Linking back | • Link back to the University website if posting in an official University capacity.  
|             | • Ideally posts should be brief and full information should be kept to the University’s website. |

Adapted from: (University of Leicester, 2011b)

Key Fact: Representing the University

If you identify yourself as a University member of staff online, it should be clear that the views expressed are not necessarily those of the institution. A well written social profile or disclaimer can held make this clear.

Final Thoughts

Finally remember that the social media world is all about debate and discussion. Enter into it with that in mind, thinking carefully about responding and even whether to respond at all. Sometimes the best response can be not to respond. Be constructive and polite, don’t be defensive. And hopefully you’ll be able to use it legally, safely and constructively for all parties concerned. You may find the JISCLegal check list (Appendix B JISC Legal Web 2.0 Tutor’s Legal Issues Checklist) a useful tool to fully evaluate and minimise all the risks to which you might otherwise be exposed.
8. Further Help

If you would like to discuss any of the issues raised in today’s session, then please do get in touch. The Library’s Copyright and Coursepacks Service exists to provide and guide academics and students to suitable sources of further information, and can investigate unusual cases relating to copyright.

Tania Rowlett  
- Copyright Administrator.  
- DS&R Section, David Wilson Library  
- Email: copyright@le.ac.uk  
- Tel: +44 (0) 116 229 7399 (extn: 7399)  
- Fax: +44 (0) 116 252 2075

Gareth J Johnson,  
- Document Supply & Leicester Research Archive Manager.  
- DS&R Section, David Wilson Library  
- Email: gjj6@le.ac.uk  
- Tel: +44 (0) 116 252 2039 (extn: 2039)

Other Contacts

Marketing & Communication Office  
- Chris Rice, Marketing Communications Manager  
- Fielding Johnson Building  
- Email: cr181@le.ac.uk  
- Tel: +44 (0) 116 252 2160 (extn: 2160)

Information Assurance Services  
- Prospect House  
- Email: ias@le.ac.uk  
- Tel +44 (0) 116 229 7946

JISC Legal  

Whilst the University’s Copyright Administrator may be able to answer some of your social media copyright queries, JISC Legal are also a very good source of information for more tricky questions. JISC Legal is a free online and respected information service, funded by JISC Advance and HEFCE. Their aim is to help prevent legal barriers from exploiting the advantages of ICT in UK HE and FE. As well as running a variety of events around the country for copyright practitioners, they also offer a free enquiry service that can be used by anyone within University of Leicester. Alternatively if you would like us to consult with JISC Legal on your behalf, please contact us as we would be more than happy to assist.

- Email: info@jisclegal.ac.uk  
- Web help: www.jisclegal.ac.uk/Helpfesk  
- Tel: +44 (0) 141 548 4939
### 9. Glossary

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Asynchronous communication</td>
<td>Time-independent interaction like comments on a blog, that will occur as and where the timing of the comments is not important.</td>
</tr>
<tr>
<td>Avatar</td>
<td>The representation of a user within a social platform, commonly an image or within games and virtual reality platforms a three dimensional character.</td>
</tr>
<tr>
<td>Black-flagged</td>
<td>Usually refers in the social media world to sites that potentially contain illicit or illegal materials, and are hence blocked from access. Also used verbally to indicate the activity of being detected in illicit online activity – <em>to be black-flagged</em>.</td>
</tr>
<tr>
<td>Bulletin Boards (BBS)</td>
<td>Asynchronous online discussion forums where threaded comments reply to posts. One of the oldest, and most resilient, of social media platforms. See also chans or imageboards, a subdivision, primarily concerned with the posting of media files of wildly variable levels of legality.</td>
</tr>
<tr>
<td>Chan</td>
<td>A kind of community bulletin board for sharing comments, images and links; generally associated with fringe legal and illicit activity and contents.</td>
</tr>
<tr>
<td>Defamation</td>
<td>The publication or sharing of usually hostile opinions or information which may damage the public reputation of the target in society at large.</td>
</tr>
<tr>
<td>Disclaimer</td>
<td>A public statement of questionable legal strength designed to diminish legal liability for any material posted to a social media site.</td>
</tr>
<tr>
<td>Due diligence</td>
<td>Carrying out checks using a range of approaches to attempt to establish and contact a rights holder.</td>
</tr>
<tr>
<td>Economic rights</td>
<td>Transferable rights that allow for the commercial exploitation of a work. Owned initially by the creator but often transferred, sold or otherwise assigned to another entity, such as a publisher.</td>
</tr>
<tr>
<td>EULA</td>
<td>End user licence agreement, the terms and conditions which you agree to in order to use a piece of software or website. May result in you giving away rights or privacy without being aware of it. Subject to change over time, c.f. Facebook’s privacy policy.</td>
</tr>
<tr>
<td>Flame war</td>
<td>Online comment thread that devolves from mud-slinging and exchange of insults to outright rage; often the final goal of a troll is to spark one. See the BBC Have Your Say section for frequent such exchanges, although usually well moderated these days.</td>
</tr>
<tr>
<td>Handle</td>
<td>The user name of an individual or organisation under which they make use of social networking or gaming environments. Many people use their own name or variant there of; although commonly many others (include the authors) use pseudonyms when posting. Generally included when replying to or retweeting content and comments as a form of attribution, commonly using the @ prefix.</td>
</tr>
<tr>
<td>Imageboards</td>
<td>Commonly chans or Bulletin Boards designed for the uploading and sharing of images.</td>
</tr>
<tr>
<td>Infringement</td>
<td>In the context of this booklet, the breaking of license terms or laws relating to the use and reuse of materials in which there is a copyright issue.</td>
</tr>
<tr>
<td>Liability</td>
<td>Used in this context as the overall legal risk you, or the organisation, are exposed to as a result of making use or sharing materials through social media.</td>
</tr>
<tr>
<td>Licensed</td>
<td>Reusing 3rd party material under attributable terms and conditions, usually without needing to seek formal permission.</td>
</tr>
<tr>
<td>Machinima</td>
<td>Animation videos created usually inside a game engine or virtual reality platform such as second life. Google search Red vs blue or South Park Make Love Not Warcraft for two well known examples of the art.</td>
</tr>
<tr>
<td>Moral rights</td>
<td>The rights of the creator of a work to be identified as the original author, as well as not to have the work portrayed/reused in a derogatory fashion.</td>
</tr>
</tbody>
</table>
**Oppenheim's risk formula**  
A simple way of illustrating the multiple elements that go into calculating the total risk exposure of any activity. Devised by Prof Charles Oppenheim.

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Permission</td>
<td>Written formal consent to reuse a 3rd party material by the rights holder.</td>
</tr>
<tr>
<td>Photosharing sites</td>
<td>Sites such as Flickr that exist to store, showcase, and share images. Often with user specified licences for reuse.</td>
</tr>
<tr>
<td>Profile</td>
<td>The information about an individual, often accessed by clicking on their handle. Can also include a personal disclaimer.</td>
</tr>
<tr>
<td>Public Domain</td>
<td>Has no legal recognition under UK law, but is used in the US to define material that is either out of copyright or where the rights holder has waived any and all retained rights.</td>
</tr>
<tr>
<td>Retweet</td>
<td>Retweeting is to re-post (send) a tweet previously shared by another user. Good practice is to attribute by included the handle (@UserName) of the person who originally sent the message.</td>
</tr>
<tr>
<td>Rights holder</td>
<td>The individual or corporate entity that owns the exclusive rights to grant permission to reuse any portion of a work.</td>
</tr>
<tr>
<td>Social media</td>
<td>Synonymous with social networking. Making use of sites and tools, usual external to the University, that allow the sharing of content in an open or semi-private environment</td>
</tr>
<tr>
<td>Synchronous communication</td>
<td>Real-time (live) interaction such as a live web-streamed lecture or tweets.</td>
</tr>
<tr>
<td>T&amp;Cs</td>
<td>Shorthand for terms and conditions, the licenses requirements of reusing any materials</td>
</tr>
<tr>
<td>Takedown</td>
<td>A policy or statement that defines the reaction of an organisation to challenges, trolls or flame wars. Correctly enacted and enforced they can significantly reduce liability. Written as takedown or take down interchangeably by different organisations and personal tastes.</td>
</tr>
<tr>
<td>Third party copyright</td>
<td>Reused material by an author which is not created nor owned by them, rather it is owned by someone else from whom permission or a license to reuse is usually required to use it.</td>
</tr>
<tr>
<td>Torrenting/torrents</td>
<td>The activity of sharing (torrenting) files (or torrents) across multiple computers to enable a faster downloading speed than if it was hosted on a single site. Often associated with illegal file sharing and illicit materials.</td>
</tr>
<tr>
<td>Troll/Griefer</td>
<td>An individual who delights in making profane, offensive or inflammatory comments on social media sites purely for the purposes of amusing themselves. Generally deliberately argumentative and will require blocking and deleting in order to manage.</td>
</tr>
<tr>
<td>Tweeting/Tweet</td>
<td>To post a microblog message, and any associated links or media files via the twitter social messaging service; and by extension in common parlance any microblogging service. A tweet is the singular term for a single such post.</td>
</tr>
<tr>
<td>User name</td>
<td>The online visible name associated with an account on a social media platform, often a pseudonymous handle.</td>
</tr>
<tr>
<td>Web 2.0</td>
<td>A generic term for internet applications and platforms that facilitate or rely in user interaction, interoperability, information sharing and collaboration. Social media and networking resources can be considered a subset.</td>
</tr>
</tbody>
</table>
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Laws and Legislation


Appendix A

Short Film Release Form
(adapted and reused under license from Kamerabooks.com (2006). Appears in:
http://www.kamerabooks.co.uk/creativeessentials/shortfilms/)

Name of Short Film ("the Film") .................................................................

Name of Production Company/Organiser ("the Organiser")
......................................................................................................................

Description of Involvement ................................................................................
......................................................................................................................

Date of Filming ..................................................................................................

Name of Contributor .......................................................................................

Address of Contributor ...................................................................................
......................................................................................................................

Contact Number of Contributor ..................................................................

In consideration of the Organiser agreeing that I contribute to and/or participate in the Film, the nature and the content of which has been fully explained to me, I consent to the filming and recording of my contribution to and/or participation in the Film subject to the terms and conditions specified below.

Signed by Contributor ....................................................................................

Dated .............................................................................................................

If the Contributor is 18 or under this form must be signed by a Parent or Legal Guardian.

I consent to [name of Contributor] entering into this agreement.

Signed by Parent or Legal Guardian .............................................................

Dated .............................................................................................................
Terms and Conditions

1. I irrevocably and with full title guaranty assign to the Organiser all rights now or hereafter existing in the products of my services in relation to the film and agree that the Organiser shall have the sole right to deal with the Film containing such contribution or any part of it in any way that he/she thinks fit. I agree that the Film incorporating my contribution or any part of it may be exhibited or otherwise however exploited in all media and formats now and hereafter created throughout the universe for the full period of copyright and in perpetuity.

2. I waive any so-called "moral rights of authors" in the Film and such rights under section 77 and section 80 of the Copyright Designs and Patents Act 1988 ("Act") as I now have or hereafter acquire in relation to the Film. I irrevocably grant the Organiser all consents under Part 11 of the Act in perpetuity.

3. The Organiser may without my further consent use my name, likeness, biography photographs and recordings of interviews with me in exploiting, advertising and publicising the Film in all media and formats throughout the world now or hereafter created.

4. The Organiser and its assignees and/or licencees shall not be liable to me or my legal representatives for any loss or damage or injury to me or my property caused or suffered in connection with the Organiser's making of the Film unless caused by the negligence of the Organiser and recoverable on that ground and in the event of any breach by the Organiser I agree that I will not be entitled to injunct the Film.

5. I agree that the contribution shall not contain anything which is an infringement of copyright or which is calculated to bring (name of Organiser) into disrepute or which is defamatory provided however that the Organiser shall not be entitled to bring any claim against me in respect of any defamatory material that was included in my contribution without negligence or malice on my part.

6. I confirm that the terms of this agreement have been explained to me and that I understand them.

7. This agreement is the entire agreement between me and the Organiser relating to the Film and is governed by the laws of England and Wales.
### Appendix B

**JISC Legal Web 2.0 Tutor’s Legal Issues Checklist**

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Could my proposed use of Web 2.0 technology...

<table>
<thead>
<tr>
<th>General Considerations</th>
</tr>
</thead>
<tbody>
<tr>
<td>... 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.</td>
</tr>
</tbody>
</table>

| Breach of the 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. |

<table>
<thead>
<tr>
<th>Intellectual Property Law</th>
</tr>
</thead>
<tbody>
<tr>
<td>... 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 need 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.</td>
</tr>
</tbody>
</table>

| 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 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 adopted 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.