

# **Integrating industrial partners into e-teaching efforts – legal pitfalls and circumventions**

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## **1 Motivation**

University-wide learning management systems (LMS) [HS07] can automate the tedious steps in setting up co-operations between companies and universities to some extent [FH10] and solve problems of temporal synchronization and spatial distance. We aim to support long-term co-operations and establish inter-organizational networks to increase practical relevance in academic teaching, real-life profit of academic research and support recruiting and job search processes. We developed co-operation models in which the company representatives are not just learners, but contribute knowledge, experience and real-life questions. But company members cannot be given just students' access to the LMS courses for reasons of privacy, data protection, copyright and convenience.

## **2 Appropriate codes of law**

### **Bavarian Higher Education Act**

Since we started the pilot phase of our project LMS4KMU<sup>1</sup> using the Virtual Campus<sup>2</sup> of the University of Bamberg, the Bavarian Higher Education Act (Bayerisches Hochschulgesetz, BayHSchG) is relevant. One of universities' duties is further education (Art. 2 (1) BayHSchG) and tasks include economic co-operations, transfer of knowledge and technology, and to encourage acquisition of additional qualifications in co-operation with the economy and the labor administration (Art. 2 (5)).

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<sup>1</sup> <http://tinyurl.com/LMS4KMU>

<sup>2</sup> <http://vc.uni-bamberg.de/moodle>

Article 71 deals with guest students, further education studies and fees: Universities charge fees from guest students and cost-covering fees from attendees of further education studies (Art. 71 (8)). “Guest student is, who is matriculated at a university to attend several courses” (Art. 42 (2) S. 3). Further education studies are for people, having a university degree and subsequent work experience. People without a university degree can—as an exception—participate in those parts not leading to an academic degree, assuming they have gained necessary qualifications at work or in another way (Art. 43 (6)) [Re07].

Consisting of **bi-directional** knowledge transfer and real co-operations our approach differs from guest studies and further education studies by aim, direction of knowledge transfer, monetary costs and involvement of the company as a whole as well as the lack of possibilities to physically attend lectures and to achieve certificates.

#### **Bavarian Data Protection Act**

For the University of Bamberg, the Bavarian Data Protection Act (Bayerisches Datenschutzgesetz, BayDSG) is relevant, being stricter than the German Data Protection Act (Bundesdatenschutzgesetz, BDSG). Data acquisition, processing and utilization are only legal, if explicitly allowed by law or if the person concerned has agreed (Art. 15 (1) BayDSG). To obtain the agreement, persons concerned have to be informed about the purpose and that they can deny their agreement (Art. 15 (2)).

The acquisition of personal data is allowed for the body that needs the data to fulfill its rightful duty (Art. 16 (1)). If personal data cannot be acquired from public sources, they must be acquired from the person herself. The acquisition from third parties is only allowed when explicitly allowed by a legal rule, acquisition by the person herself is not possible or in case of legal transfer from a public body (Art. 16 (2)).

It is allowed to save, alter or use personal data if the saving body needs it to fulfill its duties and if it is according to the purpose, the data have been acquired for. If the data have not been acquired before, the purpose for usage and alteration must be the same as the precedent data saving (Art. 17 (1)).

Joining courses, industrial partners get access to students’ personal data, which is not the purpose, the data have been acquired for. So students have

to be informed about that new purpose beforehand and get the choice to deny their approval.

Our approach aims to support recruiting processes, however article 18 has to be adhered to: Data transfer to non-public bodies is allowed if it is necessary for the transferring body to fulfill its duties and a usage would be allowed according to article 17 (1) S. 2 and (2) to (4). It is also allowed if the non-public body has a legitimate interest in the data and the person affected has no legitimate interest in denial (Art. 18 (1)). The receiving body is not allowed to use or process transferred data in any other way than according to the transfer purpose (Art. 18 (4)).

As recruiting processes are an aim but not the foreground purpose of our approach, company members should not spread any personal data of students in their company.

### **German Copyright Act**

As there are no regulations about copyright for the whole European Community yet, the German Copyright Act (Urheberrechtsgesetz, UrhG) is the appropriate code of law. A protectable work is always a personal mental creation (§2 (2) UrhG). So if the course contains content created by the lecturer it is a protectable work.

Courses often include third person works for illustration, evidence, or further reading. In the context of education and research, it is allowed to make published parts of a work, works of small size or singular articles accessible to the delimited circle of students of a course (§52a). So it is allowed to make content accessible to only the students of a university course via an LMS, without having to ask the author for permission. However, §52a does not absolve from the need to pay compensations, which are collected by collecting societies [Kr08]. For convenience, a framework agreement has been set up between the German federal states and the collecting societies. The current version of §52a is valid until December 31<sup>st</sup>, 2012 [Kuh07].

As §52a does not allow granting **company members** access to copyright protected material without permission of the author, the lecturer must have a possibility to hide material from company members (cf. chapter 3).

Lecturers have three options for lecture notes:

1. Hiding them from industry partners.
2. Providing special versions without third person content.
3. Using third person content only as citations.

Citations (§51): Duplication, distribution and public repetition is allowed if the outline of the usage is justified by a special purpose. Third person works have to be cited with correct source information (§63) and may not be altered, except translated (§62). Also important are size and citation purpose. A relationship between citing and cited work regarding content is necessary, own statements must be supported by the citation and the citing work must have enough own contribution [Kre08]. In contrast to §52a, a correct citation according to §51 absolves from paying compensation [Kre08].

Theoretically, one could declare the whole LMS course as an own independent work and treat complete articles as citations, however, withstanding judicial revision is doubtful.

### **3 Adjusting LMS to meet legal regulations**

University LMS usually provide the user roles “lecturer”, “student” and “tutor”. Our approach additionally demands ”company staff” and “corporate governance”. To minimize effort, users should be allocated to “student” or “company member” automatically.

User accounts for students are either created by the system administrator or by students via self-registration. In the latter, students insert necessary data voluntarily and the purpose is obvious. But not if the administrator creates the accounts: When a student matriculates, his personal data are acquired for matriculating purposes. Before transferring data to the system administrator of the LMS, the student has to agree by signing a form.

Users can either get access to restricted courses by entering access codes or the lecturer enrolls them manually. They can administer their profile in the LMS themselves, deciding which personal data they want to save in their profile and which of these can be seen by others.

With access to selected courses in the system, company members also get access to personal data. One solution could be, not to grant access to student users’ profiles. All the discussion forums and student generated content

could also be hidden from companies. But this would be in contrast to the purposes of our approach. The only useful solution is, to inform the students about the new purpose before they join the course and provide their personal data to company members. Students can change their profile before joining the course and they know that company members have access to data they upload. They can also decide not to join the course. The lecturer should be able to create special discussion forums or content just for students that are hidden for the company members and vice versa.

## 4 Outlook

We implemented our approach in the moodle system of the University of Bamberg in April 2009 and are planning to transfer it to other universities using moodle or other LMS such as ILIAS<sup>3</sup> or StudIP<sup>4</sup>.

The extended version of this paper is available from:  
[http://www.uni-bamberg.de/fileadmin/uni/fakultaeten/wiai\\_lehrstuehle/  
medieninformatik/Dateien/Publikationen/2010/  
ErHe\\_educ\\_a\\_2010\\_extended\\_version.pdf](http://www.uni-bamberg.de/fileadmin/uni/fakultaeten/wiai_lehrstuehle/medieninformatik/Dateien/Publikationen/2010/ErHe_educ_a_2010_extended_version.pdf)

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<sup>3</sup> <http://www.ilias.de>

<sup>4</sup> <http://www.studip.de>

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