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## Challenges of e-learning to the Administration of Copyright and Authors' Rights.

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I come to this discussion with several possibly contradictory roles. I am on the one hand a professor at the University of Oslo in a department that wants to enter into the area of distance education using new communications technology, something, which is a central part of both our research and teaching strategies. On the other hand I am a writer who produces texts of many kinds that might be useful for students, others and mine. As a writer I have two concerns: I want my texts to be as widely read and used as much as possible, but I also want a fair remuneration for the use of the same texts. Furthermore I am a writer in a free market of intellectual products, and I publish with acknowledged publishers in Norway and internationally. The contracts that I sign for my articles and books are often very different from publisher to publisher, and from country to country. And I often I am not even offered a contract for the articles that I publish. Sometimes my articles are put on the web without my knowledge, sometimes, but not very often, I put them on the web myself. In addition I am the chairman of the board of an organisation that defends and administers authors' and publishers' rights.

As a teacher I am expected by my university to supply my students with teaching material created by colleagues from all over the world and myself. It is often very unclear how my colleagues, and also I get remunerated for the use of this material. Not yet at the University of Oslo, but at many other universities, the university has introduced as part of their contract with their teachers, that they control the copyright to their works. Thus the role of many of my colleagues is that of an authorial serf. The confusion of the roles that I have outlined above is going to increase in the future if there is no proper system for regulating access to teaching material both for ordinary university teaching and the increasingly important and profitable area of higher distance education and e-learning.

Norwegian universities and colleges annually pay more than 10 million dollars so that their staff and students can have access to electronic material in the form journals and reference works. This arrangement, which is very practical for me in my role as professor, has a flip side when it comes to my role as a writer and copyright administrator. As there is a contract between the teaching institutions and the publishers the material that comes from this vast base, does not count in relation to the extended license agreement between Kopinor and the Norwegian University and Higher Education Council about legal copying. And thus it is mainly the publishers who benefit from this use, not the authors.

This kind of agreement is probably only the first signs of a development in electronic academic and scientific publishing that will imply major changes that will affect my three roles outlined above, but also academic publishing. In this area it is very

important that publishers, authors and universities develop a model for rights management that will secure authors and publishers at the same time as the publishing industry does not end up in the same mess as the music and film industries. A report from this year's Frankfurt Book Fair in *International Herald Tribune* referred to a new electronic system developed by the German international STM publisher Springer for managing digital rights for the scientific and professional literature. It implies that "(...) Springer's clients - mostly university libraries - will be able to access for a single fee more than 10,000 titles with minimal restrictions on sharing."<sup>1</sup> Developments such as these will affect both ordinary university teaching and distance education profoundly.

I will try to illustrate what the challenges are and how far the development so far has gone by referring to an American company called Laureate<sup>2</sup> whose activities exemplify very well what is happening. It is a very professional and profitable corporation. The centre of its activities, which encompass 20 accredited institutions in Asia, Europe, and the Americas serving more than 215,000 students worldwide, is an on-line distance education university called Walden.<sup>3</sup> It has students from more than 30 countries in addition to the United States. The teaching material that the students use stretches from ordinary textbooks, provided to the students by Walden after having been bought by the university directly from the publisher, to DVDs especially created for each course. The students never have to visit a bookstore. Articles are either provided in the form of hard copies in the form of course packs, but mostly in electronic formats. They are either provided through the electronic library at Walden through licenses with publishers, or as texts that are found on the web, for which no payment is being made. The university runs a webiography, where the teachers post references to material available on the net.

Like in other similar institutions the teaching materials are composed of originally authored work by internal and external academic contributors, and from third-party materials licensed for use with Walden students. The professors at Walden thus contribute to the designing of special course-material – both in the form of input to multimedia productions produced by Walden's own department, and in the form of written course material in the form of manuals and books. The university signs special contracts with its teachers for the development of such material, and it is Walden that publishes it. It is thus possible to say that Walden University is a multipurpose learning environment that covers many different functions. It is a course provider and teaching institution, where the teachers interact with their students over the net, supervise, comment, grade, provide teaching tools etc. But it is also a publisher and multimedia producer, and in addition a bookseller.

A question, which is often asked by institutions such as Walden is: Who is going to be the better publisher for our needs? Is it a general or specialized textbook or STM publisher? Or is the university itself, which can tailor its material for the particular needs

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<sup>1</sup> Carter Dougherty: "As books go online, publishers run for cover". *International Herald Tribune*, Monday, October 9, 2006.

<sup>2</sup> See: <http://www.laureate.net/>

<sup>3</sup> See: <http://www.waldenu.edu/>

of its teachers and students? Do the publishers have what on-line universities really need, or do the universities have to produce their own material? And then of course comes the question of whether this is publishing, or rather a new form of interactive restricted access communication that increasingly will compete with ordinary academic and teaching material publishing?

Walden observes all rules for copyright. On its teaching material it is typically stated that everything is “reprinted with permission of the copyright owners”. I do not know whether this only covers the publishers who have acquired all rights from the authors in the manner that is quite common as regards academic publishing, or whether there are separate agreements with authors and their organisations.

Laureate is but one prominent company in the increasingly important economic field of distance learning. It is very professional and is run on a pure profit basis. On its website it states among others that it “seeks to complement, not compete, with government and non-profit institutions in our markets.” But in this area the competition is already being felt between other companies such as Laureate and between traditional universities that now to a larger degree enter the market for distance-education. They do so to quite some degree in order to earn money in an increasingly competitive market. The background to this development is manifold, but among others is that education worldwide more and more is becoming a driving force for social mobility and economic development. The demands of a competitive global economy call for increased and flexible access to a higher education, often not provided by traditional institutions of higher learning. Therefore the interest in the market for post-secondary education increases, regardless of the source of funding. It is an important aspect of this development that it often takes place where the traditional institutions and public education are unable to meet this growing demand.

Walden was founded in 1970, and the date for its establishment is no coincidence. It was in the late 60s and early 70s that a number of similar institutions were developed. They were to quite some degree the result of a burgeoning media and communications revolution. Maybe the most well-known and prestigious institution of this kind is The Open University in Milton Keynes in England, which opened in 1969. It is a typical product of the modernising 60s and was a prestige project of the Labour government of Harold Wilson, with its new social and technological visions. Since its establishment the Open University has employed many different tools for distance learning, and it has moved with the times as regards teaching technologies. Characteristically it now uses written, audio, and visual materials; TV and radio, which it used very inventively from the very beginning; the Internet; DVDs, “telecourses” and other forms of interactive technologies for learning such as online conferencing. Students are supported by tutors who provide feedback on their work and are available at face-to-face tutorials, by telephone, and/or on the Internet. The Open University also organises day schools and summer schools where are students attend intensive courses and seminars.

In order to complete these examples of the growing importance of higher distance education let me also refer The University of South Africa (UNISA), which dates back to 1873 when it was founded as the University of the Cape of Good Hope. It spent most of

its early history as an examining agency for Oxford and Cambridge universities and as an incubator for most other universities in South Africa. In 1946 it was given a new role as a distance education university, and today it offers certificate, diploma and degree courses up to doctoral level. As part of the reorganisation of higher education in South Africa Unisa in 2004 merged with Technikon SA and the distance education component of Vista University. It has about 200 000 students from all of Southern Africa, other African countries and abroad. It has a staff of over 4 000 who provide tutorial and administrative support to the students. Many of the students at UNISA, do not have the same wide range of communication tools for e-learning as those used at Walden or The Open University. This again poses special challenges in the production of teaching material for Third World students. UNISA students pay a fee for their enrolment at the university, and it is shady whether it is a commercial teaching institution or not.

To those of us who are both teachers and writers the very exciting developments in communications technologies and the increase in e-learning have created many challenges in the area of copyright management and licensing.<sup>4</sup> First of all new teaching methods and materials imply that new rights holders that one usually does not take into consideration will have important rights to the multimedia teaching components of e-learning. They comprise among others films, music, performances etc. The use of such material in ordinary classroom teaching has already for many years been a problem, because there in many cases have not existed licenses for the use that neither have been practical to obtain nor have come at a reasonable price. The consequence has of course been that we nevertheless have used this material in a manner which strictly seen has been illegal, but there has not existed any alternative.

The rapid development of new teaching environments with virtual classrooms, telecourses, Internet distribution and other e-learning platforms for multimedia products etc. implies challenges both for traditional universities but particularly for distance education institutions as well as for copyright owners and collecting societies. The universities must secure the right to perform, display, distribute and reproduce all visual, musical and written material incorporated within the e-learning programmes. Copyright owners and administrators such as collecting societies must find practical and user friendly ways of licensing material for this form of educational use.

A particular problem in relation to distance learning is the question of what constitutes "a classroom or face to face learning"? What is the legal situation when it comes to virtual classroom teaching with interactive relationships between students and students and teacher? What about Internet distribution of teaching material prepared by staff but using material from other sources? Is the situation the same for in-time use as for the use of recorded material used over and over again? In this context we enter into the very shady area of what is fair use. As I understand it this does not cover that the same professor utilises the same material "from term to term". It is obvious that fair use clauses do not protect distance-learning organisations and universities distributing the same programmes and teaching tools in subsequent semesters or years. It is often also the case that fair use only applies to texts that are copied at the request of professors themselves. Therefore an e-learning environment does not protect copying done by

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<sup>4</sup> See among others: Kenneth D. Salomon: "A Primer on Distance Learning and Intellectual Property Issues". <http://www.teletrain.com/copyrigh.htm>

producers and distributors of such material, be it corporations, publishers, telecommunication organisations or universities.

A special difficulty, which is not really relevant in an ordinary teaching environment is essential in relation to distance learning, and relates to scripts and lectures notes produced by professors in relation to their teaching. Copyright acts usually imply that the copyright owner has

(...) the exclusive right to make derivative works from an original copyrighted work. Therefore, contributors to instructional programming may claim ownership rights to the programming itself under the theory that the program is a "derivative work of their lecture notes or other materials."<sup>5</sup>

Hence, distance-learning institutions should negotiate with, and be prepared to pay, their instructors for the rights to notes or other background material they use in the productions for their institutions.

A particular problem raised by rapid increase in distance learning is that strictly speaking most of these activities in some way or other must be regarded as being for profit. It is very clear in the case of Walden University, which is owned by a commercial corporation. It is less clear with The Open University and UNISA, but also they provide course material for their students in a manner that at least is reminiscent of a commercial activity. Furthermore many ordinary universities – private as well as state – now develop distance-learning programmes that they sell on the market for such products. And they do so in order to among others to boost their budgets and as a supplement to their income. Thus to apply fair use in relation to not-for-profit activities in this context is dubious.

And finally, my colleagues and I at ordinary universities provide our students with references to material that exist on the web. This is even more prevalent in distance education, as illustrated by the Walden Webiography. Unless this material been put on the web with an expressed declaration that it is for free use – through for instance a “Creative Commons” license, it is copyrighted. And its use should be remunerated. How to achieve that? One can of course resort to all sorts of complicated mechanism in the form of DRMs that so far have not worked etc. But my solution is the one that has been provided for in the new, Norwegian copyright and authors’ rights act, to institute an extended license also for electronic material. Such a solution is easy to administer and it is user friendly. I benefit both as a professor and a writer, it gives my students legal access to important study material and it also benefits my publishers.

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<sup>5</sup> Op.cit.