

Appendix A

Edinburgh University Case Study

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CD-ROM projects, including

“An introduction to the structure and function of mammalian skin”

Introduction

The project on the biology of mammalian skin was initiated by the author, Dr David McEwan Jenkinson, at the time of his retirement from the Moredun Research Institute and a teaching position in Glasgow University. He was recommended to the CLIVE team in the Royal (Dick) School of Veterinary Studies (Edinburgh University) by the Head of the School, Professor Richard Halliwell (Dean of Veterinary Medicine).

CLIVE (Computer-aided Learning in Veterinary Education) is an educational and multimedia development group in R(D)SVS that also leads a consortium of the 6 UK veterinary schools. After TLTP2 funding 1993-1996 the group has continued with some posts supported by external funding from grants and contracts. Contract work is undertaken where the subject-matter is relevant to the teaching function of the R(D)SVS with the condition that products are made available at no cost to members of the CLIVE consortium (6 UK veterinary schools and 12 overseas associates). Most of this contract work has been for the production of educational multimedia as CD-ROMs and is described later in this document.

David Jenkinson felt that an electronic medium should be used to encompass his expertise because it enables animations and interactions. He also drew attention to University issues as follows.

“The project on skin was stimulated by the trend in the UK and other developed countries over the past decade towards an increase in University student numbers with a concomitant decline in staff numbers. A continuing rise in student number per staff member combined with loss of breadth of expertise necessitates a change in approach to the teaching of scientific subjects with a greater emphasis on self teaching i.e. fewer lectures and more directed individual e-learning backed by tutorials”.

The possibility of web delivery was considered, however David Jenkinson sees this as potentially commercial, with expected income from sales of a CD-ROM. The content of the CD-ROM is large, containing information from very many sources including many images and some video sequences. Networked delivery within an institution at 10-100 Mb/s is satisfactory and commercial broadband at 0.5 Mb/s may be, but many compromises of quality would be needed for dial-up access at 56 Kb/s. These were considered unacceptable.

This CD-ROM is not a supported course, nor have been any of our previous productions. At the start of the project there was no infrastructure in Edinburgh University to support an on-line course. An infrastructure is being developed. It is unlikely that the academic support for this area would be available and a business model has not been attempted for distance learning. Commercial returns therefore depend entirely on sales of the CD-ROM.

Motivation, Rewards and Business Model

The CLIVE group, like any University unit, is only able to consider undertaking a project of this type if their work is funded from the start. Where the subject-matter is considered relevant to the academic work of veterinary schools (as in this case), work is budgeted at below market rate, that is to meet direct staff costs and expenses but without a contribution to University overheads.

With this understanding, it was agreed to make application to the European Commission Leonardo programme to fund an international consortium to undertake development and evaluation of the CD-ROM. The title of the Leonardo application was *“Initial contribution to a central reference source on mammalian skin for veterinary practitioners and the training of specialists in veterinary dermatology”*. The CD-ROM developed, however, is aimed more widely at medical and biological as well as veterinary professionals and students.

The partners in the Skin Biology project were

- The University of Edinburgh (CLIVE) – contractor, project management, multimedia design, peer review, dissemination, commercialisation
- DMAC Scientific Consultants, Edinburgh (David Jenkinson, the author) – subject expertise, storyboards, co-ordination of peer review
- Freie Universität Berlin (Germany) - multimedia design, German translations, peer review, dissemination
- Hospital Veterinari Lvera Barcelona (Spain) - peer review, dissemination
- Ecole Nationale Veterinaire de Nantes (France) - French translations, peer review, dissemination
- Warsaw Agricultural University (Poland) – student trials, peer review, dissemination
- Additional peer review and advice were provided by Dr Chiara Noli (Italy), a private veterinary practitioner and specialist in dermatology, who was a member of the steering group along with representatives of the partner institutions.

Development work by the author, the CLIVE group and groups in the Berlin and Nantes as well as evaluation studies in Spain and Poland was funded in part by the Leonardo grant. All development institutions also made contributions in the form of staff time. On completion of the product a commercialisation agreement was made between all institutional partners and approved by the European Commission. The agreement provided for a split of revenues (after deduction of expenses) between the author and development teams in varying proportions; CLIVE for the English version, Berlin and CLIVE for German, Nantes and CLIVE for French.

Many publishers were approached but none showed an interest in marketing this title. That is not surprising when we consider our previous experiences with publishers and distributors (see below). No publisher has raised any concerns about IPR; the issues are commercial. Sales of the English language version of Skin Biology are made by Edinburgh University (as are all other CLIVE CD-ROMs), German by the Free University of Berlin and French by Nantes Veterinary School.

The CLIVE business model and IPR policy

At the end of TLTP2 funding in 1996 the CLIVE consortium had produced for its 6 members about 40-50 programs delivered over Local Area Networks. UK Higher Education was not at that time a market as it was entitled to all the output of TLTP projects at distribution cost only. With advice from a business consultant a business plan was prepared projecting income to support continuing development work. The plan was accepted by the TLTP executive who provided start-up funding, as also did the RCVS Trust, the charitable arm of the statutory professional accrediting body. The plan projected two main elements of further income.

1. Sales of CD-ROMs. Eight of the TLTP-produced programmes were considered in 1996 sufficiently substantial and “finished” to merit individual marketing initially. 1000 copies of each were replicated. After discussion with several commercial publishers two publishers were contracted to market the CD-ROMs. One was a major British book publisher, the other a North American multimedia company spun off from a veterinary college. Each was awarded exclusive marketing rights within the territories of Europe and North America respectively and non-exclusive rights elsewhere. Commission was 50% of the agreed sale price of £49 per single-use CD-ROM. Site licences for institutions were five times the single price.
2. Associate membership. Non-UK veterinary schools were offered all the programmes produced by the consortium with a site licence for delivery within the institution. The joining fee is £3000 and an annual subscription of £700 brings everything new or revised in that year.

The CLIVE business model is governed by a “collaboration and exploitation agreement” between the 6 UK universities with veterinary schools (see *Appendix A*). The IPR provisions are summarised in the following extracts.

“...all Background shall remain the property of the Party, or third party, in which it is vested at the date of delivery hereunder. Such delivery shall constitute a non-exclusive, royalty-free right to use the same for the CLIVE project. The Party delivering the same

shall have received appropriate third party permission for such use". (4.1. "Party" means one of the Universities party to the agreement).

"Any CLIVE Products created or arising during the course of the CLIVE Project shall belong to the Party responsible for creating the same..." (4.2).

"...Edinburgh will be deemed to have an exclusive licence to all CLIVE products for the duration of this Agreement for the purposes of concluding, and entering into, sub-licences with third parties for the manufacture, sale and distribution thereof" (5.3).

We have followed this model in all our work. IPR is never transferred. Licence or other agreement is obtained for use of IPR in defined contexts

For controlling the IPR of CD-ROMs sold singly, the following wording appears on each CD-ROM. This is obviously formulated to cover sound recordings rather than data, however we were advised that we should use this standard wording.

"All rights of the producer and of the owner of the recorded work reserved.
Unauthorised copying prohibited".

Associate membership is controlled by a site licence based on a model supplied by the TLTP executive modified by the Edinburgh University lawyer (see Appendix B). This allows unlimited copying for network or CD-ROM delivery within the licensed institution. It does not specifically refer to students taking CD-ROMs for use outside. When asked we have agreed that this is legitimate.

If a single programme is sold with a site licence, a written licence agreement is required (see Appendix C), based closely on the model for Associate members.

We have no anti-copying precautions in place and no procedures for monitoring conformity to licence conditions. We have not been made aware of any breaches nor would expect to be. If we did hear of breaches, we would consider and take advice on what we might do. Any action would be the responsibility not of the CLIVE group but of the University as legal owner and surrogate for the other owners. Our approach is simply to ensure that all copies of our work have clear statements of what is permitted.

The business model of 1996 produced some income but not enough to sustain a multimedia development unit. The British publisher sold few CD-ROMs. The North American company did not sell any: we have evidence that they did not market our materials at all, effectively locking us out of North America by holding exclusive rights. All we could do was terminate the contract. After the British publisher withdrew we had a marketing contract with Scottish Knowledge, a company owned jointly by the Scottish universities; this company went out of business. We now sell CD-ROMs directly (double figures monthly) advertised on our website at lower prices, £10 to £40, typically £24; on-line credit card payments are possible through the University payments system. The Equine Veterinary Journal bookshop in Newmarket is a particularly good customer for discounted CD-ROMs.

There are 13 Associate members, 10 being veterinary schools that paid £3000 plus £700 annual renewal. The other 3 are agricultural institutions that paid £2000 (£450 renewal), the lower cost in recognition of the less close fit to their academic areas.

The relatively poor sales of CD-ROMs can be attributed perhaps to the limited size of the veterinary market world-wide and the focus of the topics on undergraduate education. Nevertheless some of materials are useful as refresher material for practitioners. It is likely that accredited Continuing Professional Development (CPD) will be mandatory for registered veterinary practitioners in the near future. We plan to move into the market for on-line CPD. This is a University-wide aspiration and we expect to adopt as far as possible standard University procedures and contracts for IPR in CPD.

The CLIVE unit in Edinburgh has been maintained by two further sources of income not included in the original business plan.

3. Sponsored and contract work. Companies that market pharmaceutical products for animal healthcare have commissioned several educational CD-ROMs. They have separate agreements with the academic authors and with us to cover our development costs. The CD-ROMs are either delivered to the companies in

thousands or else replicated by them. Similarly, we have been contracted by the Veterinary Defence Society, the Farriery Training Council and Warwickshire College (equine studies), which had its own grant funding. In all cases we retained the right to distribute to our members and associates. In a few we can also sell directly, but these sales are not significant.

4. Grant applications. These have the advantage that the applications are written by us (or our collaborators), therefore define what we want to do for own educational purposes, within the guidelines of the funding bodies. Successful applications have been made to the European Commission (Socrates, Erasmus and Tempus programmes), JISC, the Learning and Teaching Support Network (now Higher Education Academy) and the e-learning fund of Edinburgh University. Development of the subject of this case study, the CD-ROM in Skin Biology, was funded by an EC Erasmus grant.

For sponsored and contract work, we have governed IPR issues by following the same principles as are contained in the CLIVE consortium agreement. In no case was there a formal written contract, just an exchange of emails. The following example was sent to Warwickshire College, which contracted with the Farriery Training Council and sub-contracted development work to CLIVE.

“The University of Edinburgh retains its copyright and IPR in any materials it supplies - for example text, images etc., but would grant licence to use for commercial purposes to the FRC. FRC is not asked for reciprocal rights, so completed Learning packages (products) commissioned by FRC (where IPR is shared) can only be exploited by FRC. Work is done at advantageous rates in exchange for rights to distribute resultant packages cost-free for educational purposes to CLIVE members and associate members. No CLIVE member/associate member may distribute any of these products or use them as components in other commercial products”.

This provision was included in the work schedule (*Appendix D*, not a formal contract) agreed between Warwickshire, Edinburgh and the FTC as the following text.

“Intellectual Property Rights and Copyright.

The work will be carried out in collaboration with CLIVE (Computer Learning in Veterinary Education) at University of Edinburgh.

The University of Edinburgh retains copyright and IPR in any materials it supplies - for example text, images etc., however it is possible for the FTC to request a commercial licence for the use of these materials.

.....

Work is done at advantageous rates in exchange for rights to distribute resultant packages cost-free for educational purposes to CLIVE members and associate members. No CLIVE member/associate member may distribute any of these products or use them as components in other commercial products”.

Grant-funded work may have conditions required by the funding body, for example the EC Leonardo programme (*Appendix E*), applicable to the CD-ROM in Skin Biology. The usual CLIVE practice, however, applied in this case as is shown in the partnership contracts (*see Appendix F*). The following extract covers IPR.

“The Partner shall undertake to abide by the provisions of Annex III - Part 4, entitled ‘Property rights’, of the Contract concluded between the Contractor and the European Commission.

The Contractor shall provide the Partner with all information on this subject, including such information as appears in the Contract and its amendments and in official documents and correspondence.

The Partner will retain ownership of its own copyright and intellectual property rights in materials or other results that it produces or develops in the performance of the project, and will grant the Contractor and DMAC Consultants a non-exclusive, royalty free, world-wide, irrevocable license to use such materials and results for educational and

commercial purposes in the form of the CD ROM produced by the project. The Partner will receive a non-exclusive, royalty free, world-wide, irrevocable, non-transferable license to use the CD-ROM produced by the project for educational purposes within its institution". (*Article 11, Property rights*).

There is no special provision concerning translations, therefore the translating partners retain IPR in translated texts jointly with the originating author of the English text. Similar provisions to the above were included in the "Agreement regarding ownership and exploitation of Intellectual Property Rights" (*Appendix H*) concluded at the end of the project (see sections 2, 3 and 4 of *Appendix H*).

Methodology being used

A short questionnaire has been sent to all participants. As an incentive to answering, a fee of £100 or €150 was offered for a completed return. The questions were as follows.

1. What was your main reason for participation in the project?
2. Were there other contributory reasons for participation? If so, what are these?
3. Does your institution (as far as you are aware) have a policy governing IPR in e learning? If yes, outline your understanding of the main features of the policy.
4. Did you and/or your institution contribute intellectual property to the project? If so, what was its nature? Do you regard contributed IPR as belonging to the institution or to yourself?
5. Did you acquire intellectual property belonging to others ("third parties") for the purpose of this project? If so, what agreements did you make with the owners of the IPR?
6. Was the contract between Edinburgh University (contractor) and your institution (partner) or yourself (sub-contractor) concerning your participation in the project satisfactory to you? Were there any problems with it for you? If so what were they?
7. Was the agreement regarding ownership and exploitation of intellectual property rights between Edinburgh, Dmac, Barcelona, Berlin, Nantes and Warsaw satisfactory to you? Were there any problems with it for you? If so what were they?
8. Do you have any other comments concerning IPR in international e-learning?

Copies of the documents referred to were included in the questionnaire. (*Appendix F*, contract and *Appendix H*, commercialisation agreement). To date two questionnaires have been returned. Two other partners have expressed willingness to complete the questionnaire but have not yet done so. No replies have been received from two partners despite repeated emails.

We have reviewed the contracts and other documents concerning the project and summarised what we regard as the essential issues here.

Development Processes and IPRs involved

A detailed work programme was agreed in advance with milestones for the author and all development teams. Images were collected from many sources including academic collaborators and other contacts. In all cases copyright remained with the contributor and a licence to use for educational and also commercial use within the context of the CD-ROM was agreed. Agreement was by letter, not by formal contract. In some cases a fee of £20 per image was paid. The exchanges were generally quite informal. In some cases the requesting letter was returned with a handwritten "OK". Three examples are included in *Appendix G*. In other cases an email correspondence sufficed, as in the following example.

"Thank you for your email. I have attached Jpeg images of leeches feeding which we own the copywrite, you are free to use these as you like.

Biopharm (UK) Ltd"

The exchanges defined the use (inclusion in the CD-ROM) but did not contain any restrictions of geographical extent or duration, which are by implication unlimited. The sources of all images were, of course, acknowledged in the finished product.

Among the partners a commercialisation agreement was made and approved by the European Commission (*Appendix H*), dealing with IPR as summarised here.

- All Background shall belong to the Party introducing such Background.
- Foreground shall be owned by the Party generating it and where Foreground is developed by two or more Parties each of the Parties developing the Foreground in question shall own that Foreground jointly.
- Each Party shall be entitled to a non-exclusive perpetual royalty-free licence to use the Background and Foreground belonging to any of the other Parties for educational purposes within the licensee's institute.

“Background” means Intellectual Property Rights, excluding Foreground, owned or controlled by any party in the same or related fields to the work to be carried out as part of the Project.

“Foreground” means Intellectual Property Rights made or conceived by any of the parties or any person employed or engaged by any of the parties in the execution of the work to be carried out as part of the Project.

Edinburgh and DMAC would jointly commercialise the results of the project and each of the other parties granted a non-exclusive, royalty-free, worldwide, irrevocable licence (with right to sub-license) to Edinburgh and DMAC to use the results of the project for all educational and commercial purposes including the sale or other for-profit disposal of the CD-ROMs. Subsequently Edinburgh and DMAC sub-licensed Berlin and Nantes to commercialise the German and French versions respectively with an agreed division of royalties.

The agreement to commercialise was made in recognition of the rights granted to partners in Annex III of the contract with the European Commission – these were maintained (*Appendix E*). The European Commission also reserves the right to use the products of the project as it sees fit.

Permitted uses and constraints

Put simply, CLIVE and DMAC can jointly commercialise and other partners can use for educational purposes within their own institutions. Royalty divisions were agreed for all partners (*Appendix H*). Further to this, CLIVE later agreed with DMAC a reduction in royalties in exchange for the right to distribute freely to Associate as well Full members of the CLIVE consortium. This was a grey area between educational and commercial use that required clarification.

There have been no complaints or disputes regarding IPR or commercialisation.

General advice to institutions when considering IPRs in an international environment

An important area relates to translation. Commercial translators can be used for general texts and here copyright stays with the commissioning party. However we have found such translators to be unreliable for technical accuracy and potentially dangerous in the medical and veterinary fields (no doubt other fields as well). Using subject specialists means they modify and interpret using their own expertise, contributing IPR to the process. In some cases, this results in improvements to the English version. In general all translations must be checked by subject specialists in their native languages. This may mean that accommodations must be made in agreements when attributing royalties, and such translators should be included in IPR agreements.

All participants and contributors are anxious to guard their IPR to the extent of requiring permission to be granted for use, for any uses to be defined and due acknowledgement in any publication. Where fees have been paid, these were very modest, tokens really. Beyond these issues, attitudes to IPR depend on the motivation of the person concerned.

Only one partner, the author David Jenkinson, believed that significant money might be made from the CD-ROM.

Members of academic institutions saw a grant-supported process that produced a learning resource of value. Edinburgh and Berlin both have groups developing electronic educational resources for veterinary medicine dependent to a large extent on external funding.

Income from a project such as this contributes to keeping the "show on the road". It is part of the regular process of obtaining funding to do what you want to do.

The private practitioner, Dr Chiara Noli, described her motivation as follows.

"I was honoured to be involved in such a programme, I could contribute to the progress of veterinary dermatology and to its teaching (this is an important part of my profession), I like to travel and meet foreign colleagues, and the fact I received a free copy of the CD-ROM, which I believe is very well done and which I can use for my residents".

Some express anxiety about theft of images etc. Chiara again. –

"I am quite concerned about stealing of pictures by users of the CD-ROM, as well as copying them "at home" from a friend instead of buying them. However, I think this will be the future, and I am very much interested in this new teaching tool".

It seems clear that this concern relates to issues of permission and acknowledgement rather than financial return.

Comments by David Jenkinson reflect his interest in commercial return.

"The main outcome for comment concerns commercialisation rather than IPR. While there is evidence that the trend towards e-learning is accelerating, the CD appeared to be ahead of its time. International distributors of scientific material were (until recently at least) still only interested in material published in book form. They would consider marketing a CD only if accompanied by a book, a decision perhaps influenced by larger profit margins. Development of an e-learning approach will need to be accompanied by a dynamic wide-scale marketing programme beyond the scope of specialised individual producers".

Risks and Enforcement

For our first batch of CD-ROMs in 1996 we considered anti-copying measures and discussed these with the replicating company but did not in the end include them, nor have we done so since. Images and other resources can be either embedded within an application or separate files, more often the latter, which suits our way of working. The upshot is that the CD-ROMs could be easily plundered. We do not know if this commonly happens.

We specialise in learning materials for a well-defined and not very large professional area, not a mass market. Our attitude to IPR and copying is influenced by that in several ways.

- Our professional users are on the whole trustworthy.
- The permitted uses are explicit.
- We are not primarily a commercial enterprise.
- Commercial sales are a support for our University functions but not a major source of funding.
- The costs of most forms of enforcement would be disproportionate.

Among our European partners, it seems that the issues and attitudes are similar to those of UK partners in other projects we have undertaken. It is difficult for us to identify specifically international issues relating to IPR in our project. Of course, if we were to contemplate enforcement procedures in other countries, we should have to consider the legal contexts in those countries.

Andrew Short
Gill McConnell
23 December 2004

Related Documents

Please note that the following documents are associated with the Edinburgh case study. If you would like to have access to any of these documents please contact the Authors.

A) Consortia agreement	Collaboration and exploitation agreement between six UK Universities.
B) User agreement	Licence agreement for associate member institutions to use materials produced by the CLIVE project.
C) User agreement	Site licence agreement for use of materials produced by CLIVE project
D) Project Work Schedule	Project plan for Farriery Training Support Materials Project.
E) Funding Conditions	Extract from conditions of funding for EC Leonardo Programme
F) Partnership Agreement	Partnership agreement between University of Edinburgh and Freie Universitat Berlin.
G) 3 rd party request	Letters sent to individuals requesting inclusion of third party materials.
H) Partnership Agreement	Agreement for collaboration and exploitation of materials produced by partnerships involving Edinburgh University, European Universities and external consultants.