

Appendix D

Middlesex University Case Study

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IPR Case Study Report: Middlesex Global Campus

The Team

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0. Introduction and Overview

The Global Campus

The Global Campus is a blended learning programme delivered overseas by Middlesex University (MU) in partnership with other institutions. Currently the programme is delivered in Hong Kong, mainland China, Egypt, Singapore, Cyprus and Dubai, with further countries being added to the programme in this and the next academic year. The Global Campus includes the following academic programmes:

- Foundation certificate – Computing with Business (a one year “access to higher education” programme).
- Undergraduate programme – BSc Business Information Systems.
- Postgraduate programme – MSc Business Information Technology.

Further programmes are under development including “English for Academic Purposes” and consideration is now being given to non-degree programmes, particularly continuing professional development.

Since its inception in 1999, more than 1000 students have registered on Global Campus programmes and more than 500 have graduated. Currently, there are approximately 600 students registered on the Global Campus programme overseas.

The technology for the Global Campus is constantly evolving. Currently it is based on a range of software technologies including XML and software systems including the commercial product WebCT and home-grown systems developed both in-house and in partnership with small developers in both the UK (Western Consulting and CDSM) and Egypt (RITSEC). Currently the WebCT product is being upgraded to the Vista level.

Content is sourced from a range of authors in several countries – not only the UK but also Egypt, France and Finland – and is converted into final form by small companies in more than one country.

Currently the Global Campus is based in the School of Computing Science but the software is supported centrally by MU, and other Schools are gradually adopting the same approach for delivery of overseas e-learning. WebCT was bought originally for the Global Campus but in its Vista version, it is now used across MU, both on-campus

and off-campus. The Global Campus pedagogic approach has also become the basis of the MU e-learning strategy.

At present the Global Campus does not operate as a separate company or have a separate domain name. However, some aspects of the Global Campus operate via the University's existing service companies MU Ventures and Middlesex University Press – most universities have similar companies – and these are used to protect the IPR of the Global Campus when appropriate. Academically Global Campus still remains part of the School of Computing Science, which initially funded the development of the Global Campus. More recently, some external funding was provided by UK eUniversities Worldwide Limited (UKeU) to develop more programmes and upgrade and update existing ones.

The IPR arrangements for Global Campus are relatively simple:

- Global Campus commissions content from authors (internal and external to MU) and owns the IPR.
- Global Campus is aiming to increase the amount of IPR it owns by reducing the use of textbooks from third parties.
- If authors of Global Campus content want to use any third party IPR then there are Global Campus mechanisms to facilitate that – but authors are discouraged from using third party IPR particularly where these IPRs are complex to manage or have many conditions attached to their use.
- Global Campus commissions software from contractors, and owns the IPR if this makes the best business sense.
- Global Campus does not commission any content from overseas Learning Support Centres (LSC) and does not transfer any IPR to them. Note in particular that overseas partners may suggest that modified material (e.g. more locally relevant case studies) is incorporated into material (via the normal feedback processes) but they do not create it; thus there is no IPR issue. The topic of translation has not yet become a live issue.

Summary

This report describes the IPR aspects of the Global Campus operation, with a particular focus on the international aspects. All copyright and IPR is assigned to MU except where it is explicitly stated otherwise. It cannot be said that considerations of IPR have formed a major component of or constraint on the Global Campus, and this is one reason why the use of Digital Rights management software has not been considered; however, IPR issues have been a constant undertone in the development of Global Campus over the last five years.

The layout of these reports follows the rubric and template given to each project. Despite certain limitations of the template, we have endeavoured to work within it, in the interests of consistency across the projects.

The Final Report is intended to be a public document. Material that is commercially confidential has not been included. (Commercially confidential material includes full texts of the key contractual agreements and detailed business plans.)

1. Methodology

Topic overview

Our view of the key topics is as follows:

- Developing different business models for the exploitation of e-learning technology and e-learning content beyond the academic programme for which they were originally designed, in new geographical markets or on new markets outside academia.
- Managing copyrights of third party material used in the e-learning programme and issues concerned with the tracking of limitation of use and multiple use.
- Managing MU staff IPR and moral rights, where content is used in more than one programme and where it is used by other MU staff in other parts of the e-learning programme.
- Reuse of software artefacts developed by our technology partners in new programmes or exploiting such artefacts generically beyond the original purpose for which they were originally designed.
- The need to have various types of contracts with different partners and with different authors. This includes managing the different IPR issues regarding MU staff versus contracted staff from outside the university.
- How to handle detection of IPR infringement and how to prevent or reduce the risk of IPR and Copyright infringement and violations.
- The design of a reward mechanism that motivates staff to be involved in e-learning authoring and development, while assuring them that their IPR will not be unreasonably exploited.

Methodology

This subsection describes the methods which were used to obtain information on the requested areas (Motivation, Objectives, Rewards and Business Models; Background Information; Licences, Agreements and Contracts; Jurisdiction; Enforcement; Geographical Considerations; Risk).

The methods used were:

1. Documentary analysis of the contractual and related files.
2. Email interchanges and telephone conversations with overseas partners of MU, to clarify issues and seek a local perspective.

3. Interviews with MU staff and authors contracted to work for Global Campus.

Wider perspective

It has been useful that several authors on the team have experience of distance learning in other organisations including the Open University (OU) and Sheffield Hallam University (SHU). We believe it is also useful to compare the MU experience of the Global Campus programme with its experience over some months of dealing with UK eUniversities Worldwide Limited (UKeU) over delivery via UKeU of some programmes, but the focus of our report remains the MU operation.

Material consulted

The first table below lists sources of information which have been used – for example, project documents, licences, etc. Discussions which took place between parties are cited in the report. The second table lists stakeholders who were contacted or reviewed. Relevant parts of documents have been included in the report – the full text of the documents are commercially confidential.

Agreement (Licence, contract, email agreements etc)	Description
RITSEC/MU contract	Extract concerning IPR – file IPR_Clauses.doc.
MoU between MU and HKU	A typical agreement between Global Campus and a LSC
Staff Intellectual Property Rights & Revenue	File IPR_MU_STAFF-POLICY-JAN04HR.doc.
MU academic contract	File IPR_MU academic contract.doc
Global Campus Contract (early version: Mar 2004)	File IPR_GC Contract_old.doc
Global Campus Contract (July 2004)	File IPR_GCcontract Jul 04-final version.doc
Application for copyright clearance: course reader	File IPR_Copyright Clearance.doc
Authoring and reviewing e-learning material	File auth_revrv_current4 final april 04.doc
General Conditions of Purchase	File gencond.doc
Standard consultancy agreement	File stdconslMUdoc.doc
MU Corporate Plan – risk	http://www.mdx.ac.uk/mission/corporate.htm#risk

Table 1: List of licences and details of their purpose

The Global Campus works with three types of partners:

1. Technology development partnership based on sharing some of the revenue for a fixed period. This is where the MU partner develops some of the technology required (e.g. software systems, interfaces or material conversion to online format). This development is mainly done to MU specifications but with some input from the partner. The partner may share the IPR of the artefact produced but not the academic material or the learning model (e.g. SCATE). The MU-RITSEC partnership between 1999-2002 is an example of such a partnership.

2. Technology development partnership where the MU partner is paid for work done as above but MU owns the IPR. This is done mainly under the university standard terms and conditions of consultancy and purchase. Examples of such partners are CDSM, Western and RITSEC post 2002. These tend to be long term partners and get to be very familiar with our work and procedures; this allows them to provide other advice and be involved in any consultation regarding GC development.
3. Educational partnership with the LSC. LSCs are higher education or professional training institutions (e.g. HKU, HKUST and RITI). The LSCs are only permitted to use the material for MU students registered on MU programmes. They are not to use the material for any other purpose without the express permission of MU. (The MoC with HKU SPACE provides more information)

We also have developed a partnership agreement with MU Press where they assist GC in printing and distributing the learning packages. All printed material is the copyright of MU not MU Press The three types of partners are listed in the table below.

Name	Role in the programme	How we analysed them
<i>Technology partners</i>		
CDSM – www.cdsm.co.uk	e-Learning technology	Documentary review
Western Consulting – www.westernconsulting.co.uk	Online software for managing and assessing students' projects	Meetings
RITSEC, Egypt – www.ritsec.org.eg	Implementing and converting contents to the specified online format	Documentary review, telephone and email contact
MU Press – www.mupress.co.uk	Responsible for publishing, printing and managing any exploitation of the printed part of the Global Campus learning package	Meetings
<i>LSCs</i>		
HKU – Hong Kong University (SPACE)	Educational partner	Documentary review
HKUST – Hong Kong University for Science and Technology	Educational partner	Documentary review
Tsinghua University, China	Educational partner	Documentary review
Ningbo University, China	Educational partner	Documentary review
RITSEC – Regional Information Technology Institute, Egypt	Educational partner	Documentary review, telephone and email contact
Intercollege, Cyprus	Educational partner	Documentary review
<i>Authors</i>		
Middlesex U authors	Authors	Meetings, email, and phone contact
External authors	Authors	Documentary review, telephone and email contact

Table 2: List of organisations and individuals reviewed for this case study

2. Motivation and Objectives, Rewards and Business Models

This section describes what the programme set out to achieve and why.

The Global Campus programme sets out to deliver high-quality, blended learning, award-bearing undergraduate and postgraduate programmes in Computing across a range of countries which have viable populations of students able and willing to take courses delivered in English from a UK institution. The programme is ongoing and more countries are added each year. A small but increasing part of the operation is the use of material in other ways beyond award-bearing programmes.

The business driver is the requirement to increase income to the University, as part of the process of gradually reducing the dependence on HEFCE funding. The business/finance/pedagogic model includes the reduction of the amount of face to face contact to a minimum consistent with delivering a high-quality pedagogically valid programme appropriate to the culture of the target audience.

Influence on business models

The degree of influence of intellectual property rights on the Global Campus business models is determined by:

- The amount of investment required to develop the various elements of the learning package and as such allow the university to own most or all of the IPR versus the cost of buying or licensing third party material to construct the learning package of the programme.
- The time required to develop the various elements of the learning package versus the deadline for delivering the programme.

Initially, the Global Campus had a relatively limited amount of funds to invest and a tight deadline for delivering the programme. This led to the decision that MU would only invest in and therefore own the IPR of the online content of the learning package. Other elements (e.g. text books, VLE and other software used for learning) were either bought, used under license, or used with permission.

As the Global Campus began to mature, there was greater interest in owning the IPR of more elements of each learning package. One of the drivers behind this was that owning more IPR would allow the university to commercially exploit various elements of the Global Campus outside the academic programmes.

Influence on staff

There is rather more influence of intellectual property rights on reward models for staff. The document “Staff Intellectual Property Rights & Revenue” contains clear guidance on this matter:

Good practice (as stated by the AUT amongst others) suggests that revenue sharing (from the commercial exploitation of IPRs) may be best achieved via the simple formulae – ‘recover the University’s direct costs up to a point, then pay the majority of the first net income to the originator – up to a ceiling – so

as to provide a motive for active participation in the first stages, then further split the proceeds on a stepped percentage scale, with the employer taking more as the profits accumulate.’

To this end, net revenue shall be distributed according to [agreed percentages].

The matter is gone into in more detail in the “Patents and Inventions” section of the MU academic contract. (Notice that the use of patents for software is becoming increasingly common in the UK.)

MU staff receive income additional to their regular salaries if they author Global Campus materials. The rates of pay are the same as those paid to outside contractors but MU staff have to take part of their leave – at standard allowances – to do the tasks. The current allowances are defined as follows:

Internal staff must take two days’ annual leave per unit for “Authoring” and/or one day’s annual leave per unit for “Reviewing”.

Internal staff are defined as those whose workload and annual leave are controlled by the School of Computing Science. Staff in other schools of the University must seek the agreement of their line manager before signing the Contract.

Module leaders are expected to update approximately 10% of their module each year without pay as part of their workload. For postgraduate modules, this translates as 1 unit for a 10-credit module (containing 10 units) and 2 units for a 20-credit module (containing 20 units). For undergraduate modules this translates as 1.5 units for a 20-credit module(containing 20 units).

Details on interviews with MU authors

In the early stages of the Global Campus, the academics with responsibility for teaching the modules on campus at MU were identified as the most appropriate authors to develop the learning material for those same modules when delivered by the Global Campus. However, many module leaders were unwilling to author all units for their modules and so, increasingly, outside authors are used. (This was also true at SHU – and the OU has used outside authors as well as internal staff for many years.) As the issue of intellectual property (IP) is a familiar one for most academics – being their “stock in trade” – it was felt that their perceptions regarding ownership may have a bearing on their attitude to authoring for Global Campus.

The research reported in this subsection is the result of a series of interviews with MU academics who had been asked to author material for their modules, with the aim of establishing their perceptions of intellectual property in regard to Global Campus modules, and the influence of intellectual property issues on their attitude to authoring.

It was decided to undertake semi-structured interviews based on a short questionnaire in order (a) to maintain a focus on the issue of intellectual property, and (b) to gather a rich picture from the responses. At the time of the research 23 Global Campus

modules were under development or being reviewed, and 27 modules were being taught in Global Campus mode.

The interviews (with nine authors) established the following:

- None of the authors interviewed had written all the units for their module.
- Half of those interviewed believed (correctly) that Global Campus owned the intellectual property.
- Half were aware of issues of consent regarding third party intellectual property rights.
- For the majority of authors the issue of intellectual property (either their own, or third party) had no influence on their attitude to authoring.
- Most authors thought the financial recompense for their IP was low.
- Overall responses to author recognition were less strong, but there was confusion as to the extent of author recognition (i.e. previous authors, present authors, future authors).
- Half of the authors indicated that the scope of Global Campus delivery (e.g. from one or two countries to say, 20 countries) would influence their attitude to authorship.
- Almost all of the authors were influenced by time and effort constraints.

The overall conclusion from the questionnaires is that the issue of Intellectual Property is not the major influence on authors' attitude to producing distance learning material: the major influence is instead a combination of the effort involved and corresponding time required to produce quality teaching material. However, the results also indicate a mixed understanding (as authors) of intellectual property ownership. This might have been different if the authors had written entire modules and therefore had more of a stake in the outcomes. This impression of a lack of personal stake in the authoring, is borne out by the response to the question regarding global scope of delivery. Many authors had not given consideration to a "mass marketing" of their material, but on reflection said this would influence their approach. It is likely that if there was truly "mass marketing" of material, then authors would want an up-front "fees+royalties" structure.

An internal conclusion drawn from these interviews is that the author training programme will be expanded to allow more time to be spent on IPR issues and other relevant topics (editing, style, pedagogy).

3. Development Process

This section covers the development process for learning content and how IPR was dealt with at the various stages.

Most programmes that are offered typically consist of a series of 10 and 20 credit modules. According to University policy each credit equals approximately 9 hours of learning. This means that a 10 credit module requires 90 hours of study and a 20 credit module requires 180 hours of study. This does not mean that an author needs to write hundreds of hours worth of content; this time allocation should allow time for the average student to read any relevant materials, undertake all the activities, interact with peers online and face to face at the LSC (45 min per credit), engage with activities, complete coursework and take a self-assessment.

Each module is broken down into a number of units. When authoring for Global Campus, the number of units per module depends on the level of the module. The example below illustrates how many units a typical 20 credit module is broken down depending on its level:

- Foundation (level 0) modules have 10 units at 2 credits each
- Undergraduate (levels 1-3) modules have 12 units with 8x2 credits and 4x1 credit
- Postgraduate (level 4) modules have 20 units at 1 credit each.

First and last units are always one credit¹ – 10-credit modules have 10 units of one credit each; 20-credit modules normally have 12 units. The Global Campus is now used by the University to refer to its model of e-learning. An academic programme developed using the Global Campus model will have the following characteristics:

- Each constituent module of this programme will have a learning package that consists of an online material that follows the SCATE pedagogy [see below], a text book/reader that supports the online material, and a CD-ROM that contains the sections of the online material that does not require online connectivity.
- Each student will have an individual copy of – or access, as appropriate, to – all parts of the learning package for the modules on which they are registered.
- Students will be required only to attend tutorials but not lectures.
- Each student/ tutor will be issued with a Global Campus guide (study guide in the case of students and a tutor guide for tutors).

The development process is described below: Note that each module has associated with it a book (or reader), a CD-ROM and a set of web pages on WebCT, along with associated pedagogic activities. Each of these generates its own specific IPR issues.

1. The starting point in developing a module using the Global Campus model is a validated module description which contains among other things the learning outcomes and the credit weighting of the module.
2. This is then split into units (one or two credit point worth) with learning outcomes specified for each unit. Authors are then contracted to write material for these

¹ This may be different for Foundation courses.

units using the Global Campus format and after attending a Global Campus training workshop. Authors produce an online version of the material as well as a reader/book version.

3. The reader version is passed to MU Press to publish according to a set format. The online version is sent to one of the MU technology partners to convert to the Global Campus online template. After various quality assurance checks the CD-ROM version is produced by the Global Campus team and then attached to the back of the reader. The Global Campus uses the MU Press infrastructure to despatch the books to the various LSCs.

The pedagogic approach

It may also be helpful to describe the pedagogic approach. The material here is taken from “Authoring and Reviewing e-learning material”, a guide for authors and reviewers at MU who work on the Global Campus.

SCATE is an instructional design model to which all learning materials have to be authored/structured. The use of these in developing course materials enables students to study the learning materials available to them on the CD-ROM and online autonomously, with their tutor intervening mostly in the online discussions.

The SCATE template contains 5 sections, all of which are designed to contribute to the student’s learning experience. These are:

Scope – Content – Activity – Thinking – Extra

A module is broken down into units and each unit contains five sections. These are:

- ***Scope*** – this section provides the context and the learning outcomes for each unit. It also gives important information regarding how long students should spend studying this unit, any essential reading materials and what equipment they may need in order to complete the unit.
- ***Content*** – this section contains the main unit content. Students will often be directed to subsequent sections of SCATE from here, but will always be asked to return to where they left off.
- ***Activity*** – this section is the most significant for student learning. It contains activities which will help students further understand the facts and concepts presented to them in the previous section.
- ***Thinking*** – this section gives students the opportunity to reflect and share with their peers their experience of studying each unit. They are asked to contribute to a discussion forum through one online group discussion topic per unit; make an entry in their learning journal and engage with review questions. In ‘Thinking’ students will also find a self-assessment to be taken online.

- **Extra** – this section may contain further study material, hyperlinks outside the unit, etc. Materials in this section can be supplemental, remedial or advanced. As a consequence, it may look like a combination of all previous sections of the SCATE model.

The book, the online virtual learning space and the CD-ROM will contain items unique to each medium.

The CD-ROM provides the student with information about the module and all the teaching materials with links to the core text as appropriate. It functions as a backup for their studies when they do not have internet access or are encountering technical difficulties when accessing the virtual learning environment. On the CD-ROM they may also find interactive diagrams and other multimedia rich content which will aid their studies but would otherwise be difficult to access using a dial-up connection to the internet.

Most of the reading included in the “Content” section will form the major part of the core text book. This is replaced on the CD-ROM/web by a summary of the main points, animation and/or interactive diagrams.

Students can only interact with the “Thinking” section of SCATE in the online virtual learning environment. Authors may wish to take advantage of the fact that students will be online and have access to the internet.

4. Permitted Uses and Constraints

This section was intended to be used to explain how the learning content is permitted to be used (for example students may be permitted to **display** a simulation on their computer) and the constraints on these uses (for example the simulation may be purchased and only be allowed to be used by 10 students at any given time).

The Global Campus content and software is licensed to be used by students during the duration of their studies and not for other purposes or timescales. This is the norm in the sector and across the world. Acceptance of this condition of restricted use is often implicit when students register for a course, but it may also be made explicit and students may be asked to sign a declaration to ensure that they are aware of the legal position.

5. Analysis

This section covers the analysis of the factors involved in managing IPRs in international e-Learning programmes. Attention has been paid to the methodology used to manage IPRs. Clauses in key documents are used to indicate where ownership of IP lies. Any “informal” and unwritten agreements or assumptions are indicated, where known.

A) Licences, Agreements and Contracts

This subsection covers examples of documents used to manage intellectual property within the programme; experiences (if relevant) of using standard agreements and licences; and any features specific to the programme.

A comprehensive itemisation of documents has been given in Table 1. The key documents from that table are:

- For partners, the LSC contract.
- For developers, the General Conditions of Purchase, the Standard consultancy agreement and specific contracts in particular the RITSEC contract.
- For authors who are MU staff, the Staff Intellectual Property Rights & Revenue agreement and the MU academic contract.
- For authors who are external, the Global Campus Contract for authors.

In particular for the Global Campus contract with authors, it notes (clause 11) – our italics:

For the consideration mentioned in Clause 8, you, by way of assignment of the present and future copyright, hereby assign with full title guarantee to MU the entire copyright and all other rights of whatsoever nature in and to the e-Learning Package (excluding any licensed material referred to in Clause 10) throughout the world for the full period of copyright and all renewals and extensions thereof. *MU shall have the exclusive right during such period to publish and to license for publication the e-Learning Package in whole or in part in all editions, formats and media in the English language and in any translations without limitation.*

Clause 9 is also strong and may be off-putting to some authors – our italics again:

Subject to obtaining the appropriate permissions as provided under Clause 11, you, as Author, warrant to MU that the e-Learning Package is your own original work and is not a violation or infringement of any existing copyright or licence or of any other right of any other party whatsoever. *You undertake to indemnify against any claims, loss, damages or costs, including any legal costs properly incurred, occasioned to MU in consequence of any breach of your warranty hereunder or arising out of any claim alleging that your work constitutes a breach of this Warranty.*

Technically, the assignment of IPR to MU prohibits the non-Middlesex authors from using the material in their own face to face teaching; in reality, given that most face to face teaching remains private, there is no real way of policing this, even in the UK.

B) Jurisdiction

This subsection was intended to cover projection of material outside consortium of partner countries, precautions taken or plans implemented.

However, the Global Campus is *not* a consortium of partners. In fact there are few examples of successful international e-learning operations being constituted as consortia; several failures were consortia. It is important in our view that preconceptions of how e-learning operations are or should be organised do not distort the IPR conclusions of this study or the collection of studies. Nevertheless there have been some occasions where GC material has been used elsewhere and such occasions have been discussed where they arise.

C) Enforcement

This subsection is to cover steps taken to protect IP, tracking and monitoring of use, and dealing with infringement.

The situation in Global Campus is clear. There is a three-stage escalation process, built into the contracts:

1. Negotiation
2. Arbitration
3. Legal action.

There is essentially a stage immediately prior to stage 1, namely discovery.

So far the Global Campus has experienced few problems of this nature and has not had to resort to level 3. However, it is likely that many minor infringements go undiscovered.

The Global Campus Overseas Partner Agreement

Although RITSEC is an overseas partner, it has a wider remit than that of being merely an LSC. Thus it is more helpful to analyse a “pure” overseas partner agreement. The case we have chosen is the agreement between MU and the School of Professional and Continuing Education (SPACE) at Hong Kong University, which provides a service as a LSC.

The agreement, entitled a Memorandum of Co-Operation, has as its core a 4-page document with a 1-page Financial Annexe and a 3-page Administrative Annexe. The core document has 14 sections, each with 1–6 paragraphs. Paragraph 13(a) is the only one that refers to IPR – it states:

Course materials generated in the University, which may be used following approval in the Institution [i.e. SPACE], shall remain the property of the University (or its staff in accordance with contractual agreements). Similarly course materials generated in the Institution which may be used, following approval, in the University shall remain the property of the Institution (or its staff in accordance with contractual agreements).

It may seem surprising that the core LSC agreement is only four pages; however, a thorough due diligence process is undergone before such an agreement is drafted and signed. This process has three stages:

1. Informal documentary study of the LSC in question.
2. A formal “institutional visit/approval” including analysis of pedagogic, financial and operational matters.
3. A formal validation exercise in line with QAA guidelines.

Other overseas partner contracts

It is, in our view, informative to compare the MU agreements with overseas partners with others with which MU is familiar. As a partner of the former UKeU, MU is familiar with the standard UKeU overseas partner agreement. (Other agreements that could be of interest to the study team are those from the Global Universities Alliance, Worldwide Universities Network, and Universitas21.)

Key clauses from the UKeU agreement include:

1. The partner does not acquire any intellectual property rights in the course.
2. UKeU grants the partner a licence to use the UKeU trademark for marketing.
3. The partner may not offer a directly competing eLearning course from a UK university.²
4. The agreement contains provisions dealing with dispute resolution, warranties, limitations on liability, termination and confidentiality.

Note that only one clause mentions IPR.

It is interesting to note that the UKeU agreement is much longer than the Global Campus agreement. It could be argued that there is a trade-off between the thoroughness of a due diligence exercise pre-contract and the length of the final contract.

In the UKeU agreement, the phrase “UKeU” could be replaced by another UK university or consortium with no loss of relevance.

D) Geographical Considerations

This subsection looks at the issues of barriers and drivers influencing the expanded use and exploitation of e-learning both within and outside the institutions and regions of the original programme.

The drivers for global e-learning delivered from UK HE have been discussed earlier. Thanks to several years of studies and analysis of successful and unsuccessful initiatives, the issues in this area are clearer than before, even if it is still not very clear how to guarantee financial success. Experience suggests that success seems to depend more on paying attention to many detailed points, and not on conformity to

² Such a clause is often not found in other overseas partner agreements and its lack is known to cause problems.

broad-brush guidelines. This means that successful initiatives, which have determined which points of detail must be considered, will be cautious in sharing their experiences and making public their business knowhow.

The barriers are felt to be:

- Socio-cultural factors inhibiting take-up of e-learning (e-learning degrees are not seen to be as credible as conventional degrees – a problem faced by the UK Open University in its early days).
- Regulatory barriers to pure e-learning or even to blended e-learning.
- Price sensitivity.
- Competition from both local suppliers (for the poorer, less internationally focussed students) and overseas f2f suppliers (for the elite, more internationally-focussed).
- Competition from blended or e-learning suppliers from other English-speaking countries (Australia, Canada, US especially).
- Competition from blended or e-learning suppliers from the few countries with e-universities operating in other languages (primarily in the Spanish-speaking world).
- In a few countries (Malaysia, Finland, Netherlands, Germany, Korea) competition from indigenous e-universities.

Most universities interested in delivering distance learning overseas from the UK end up targeting much the same countries, thereby increasing the competition. MU follows that general approach, as the list of LSCs shows, with perhaps more of a Mediterranean focus than some other UK universities.

E) Risk

This subsection covers misuses or litigation risks, anticipated or encountered, and how they were tackled.

In general terms, the structure used by Global Campus for managing risk is aligned with best practice in the sector, including the use of Risk Registers.

Risk Registers

The use of Risk Registers is becoming common in the public sector, with academic institutions and agencies such as JISC adopting them. MU also adopts this approach; indeed the Corporate Plan states:

The University has been active in developing its risk management policy, identifying key corporate risks and devising strategies to address these risks. The Corporate Plan provides the opportunity to review our approach to risk management and to ensure that it is fully aligned with the mission and

priorities of the University. Progress on managing and updating the status of risks in the University's Corporate Risk Register will be an integral part of the Corporate Plan monitoring and updating process. The five-year targets in the Corporate Plan and the one-year targets in the Annual Operating Statement address the risks associated with the long term key priorities.

The Global Campus does not have its own Risk Register, but the School of Computing Science does: it is an amplification of the MU Risk Register. Of the eight Corporate Risks it identifies as specific to the School, none mention IPR; however one is germane to the Global Campus:

Corporate Risk 2: International Demand – important

Increasing competition from abroad, especially China. The School will diversify its international activity, e.g. Lebanon, [others omitted – commercial in confidence]. We will provide further opportunities for students to study in their own country and at Middlesex, following the model developed with RITS [i.e. Global Campus].

At the School level, the Risk Register is laid out in a reasonably standard format. While the detail in the Register must be considered confidential, it is not surprising that one particular risk is concerned with Overseas markets.

We believe that this approach, where IPR risks are nearly invisible, is (still) typical of the sector. Some evidence for this is given next.

Risk management at UKeU

Best practice in central agencies is normally closely correlated with experience in the sector (as seen in the approach of JISC and HEFCE). Thus in our view it is informative to analyse an extract from the Risk Register for UKeU from summer 2003, just at the time when the Global Campus courses were being launched via UKeU. (Even though UKeU eventually failed, the documentation of the risk management process for most of the risks was, by common consent, well handled.)

The key risks for overseas partners were seen by UKeU as:

- Best partners prove too demanding financially.
- Lack of overseas partner support due to wholly on-line nature of initial courses [this was not relevant for the Middlesex courses because of their blended model].
- Key overseas influencers [local government, universities, the press] may not support the delivery model [an issue for some projects in China].
- Exposure to exchange rate fluctuations.
- Overseas agent default or pay slowly.
- Lack of control over overseas operations (agents & employees).

- Overseas taxation: withholding and income taxes.
- Breach of overseas law (especially marketing).

The key point to note is that IPR does not figure in this list of risks; indeed legal risks amount to only one item.

Note that blended, rather than pure e-learning, does not reduce the number of risks but introduces new risks – in particular the assurance of the quality of the partner in delivering the local f2f support. This is perhaps ignored when one considers the rather upbeat press that blended learning gets nowadays,

Towards an IPR Risk Register for Global Campus

Given that Global Campus does not have a Risk Register and that there are no IPR-specific risks mentioned in the corporate Risk Register, it would be a substantial task to create a Global Campus IPR Risk Register correlated with the School and Corporate Risk Registers and signed off by Global Campus and School management. Instead, we would be happy to enter a joint discussion with similar UK HE international e-learning operations to facilitate some joint planning. However, such a discussion would have to be wider than the current five projects – we feel that, with the exception of the Interactive University, the other projects are too different in organisational, funding and business terms from Global Campus for there to be much common ground.

6. Additional Findings

This section comments upon other findings made during the case study which did not come under other headings.

*Clearance **from** publishers*

This happens routinely and there is a process for handling it including a form “Application for copyright clearance: course reader”. However, authors are discouraged from using material subject to copyright clearance as it increases the cost of the material (if there is not an agreement with the publisher in place) and the administrative costs of the programme.

In our interviews, one author reported a more upbeat situation – but authors tend not to be aware of the administrative implications of what they ask for:

In my module I wanted to put some interesting articles on WebCT for the students to refer to as additional material (the articles were written by experts in their respective fields, were recent, and raised some interesting issues). It was also an endeavour to expose students to some academically rigorous writing. The articles were not from journals that Middlesex has an agreement with, and so individual applications had to be made to the publishers for permission to put them on-line (with limited student access). The copyrights officer at Middlesex contacted the publishers, who in turn contacted the

authors. In all cases permission was granted (some “in perpetuity”) and as far as I recall, at no cost.

For more on this see Section 7, Conclusions, especially subsection 3.

Database rights

As a comment on the Interim Report, we were asked to make some remarks about database rights. In a nutshell, The Copyright, Design and Patents Act 1988, which covers the “Subsistence, Ownership and Duration of Copyright” in “works” including but not restricted to “original literary, dramatic, musical or artistic works” (http://www.hmso.gov.uk/acts/acts1988/Ukpga_19880048_en_1.htm), is not the last word on this topic. The Copyright and Rights in Databases Regulations came into force as a Statutory Instrument in 1997 (<http://www.hmso.gov.uk/si/si1997/1973032.htm>). As stated in a guidance note “Database Laws and Database Rights” (http://www.lawdit.co.uk/reading_room/room/view_article.asp?name=../articles/DATABASE%20LAW.htm):

Database rights subsist under the Regulations if:

- there is a ‘database’, which is defined as a collection of independent words, data or other materials, which is arranged in a systematic or methodical way and where relevant entries are ‘individually accessible’ by electronic or other means. Certain collections of data do not fall within this definition, such as linked records, unsorted data, and data which cannot be individually accessed. They may, however, be subject to copyright protection as a table or compilation;
- a ‘substantial investment’ has been made in obtaining, verifying or presenting the contents of a ‘database’.

The topic of database rights has not arisen in the Global Campus.

7. Conclusions

A) Key Challenges

This subsection lists the key challenges which were involved in managing IPRs for the project. It explains which aspects were the most fundamental for creation and use in an international context.

We were also asked to explain how these challenges have general significance for UK Higher Education Institutions; however, the future direction of international e-learning development at present in UK HE is debatable and it is not clear in particular how many more HEIs will develop international e-learning offerings in the near future.

1. Developing different business models for the exploitation of e-learning technology and e-learning content beyond the academic programme for which they were originally designed, in new geographical markets or on new markets outside academia

The geographical market for the Global Campus is by definition global. When the Global Campus opens up in a new country, so far the Global Campus has used the existing business model. This is one of the benefits of the blended learning approach.

However, there is a particular issue with the US. There appears to be a wider definition of “fair use” in the US (see <http://www.umuc.edu/library/copy.html>) and this could affect how Global Campus delivers into the US. When detailed planning starts, this issue will be taken into consideration.

The delivery of global Campus or materials to markets (such as CPD) outside academia is under study at MU. As with e-universities, such business ventures, are known to be problematic with several well-publicised failures and downsizing among both governmental and commercial operators.

- **Sale or request of sale of the online material to be used without MU involvement**

So far there has not been a policy framework for this or any specific thrust in that direction; however ad hoc requests have come in from time to time. Such requests mainly came from publishers who were interested in distributing MU material to a wider market, possibly after slight amendment to suit the particular target market. The financial reward offered by publishers was (as is common) not particularly high and has so far represented a real disincentive to pursue this form of exploitation further. The reward offered by publishers ranged upwards from 5% of the net sale price.

A related issue for universities in the international e-learning business is whether their agreement/contract with authors allows the university to exploit material produced via publishers that may not have been known to the authors or Global Campus at the time of authoring? And on what grounds? In the case of MU the situation has been clarified to some extent.

In the Global Campus Contract, Section 6.1 clearly states that the client i.e. Global Campus, shall retain all copyrights in the work produced. Also in the document titled Contract for Services (7/04), clause 11 clearly assigns MU:

the entire copyright and all other rights of whatsoever nature in and to the e-Learning Package (excluding any licensed material referred to in Clause 10) throughout the world for the full period of copyright and all renewals and extensions thereof.

The above implies that any material paid for can be exploited by MU in the manner suggested regardless of what the authors were told at the time of authoring. Any attempt by the author to interfere in the way the client (MU) uses/markets the work will not be successful since the author cannot derogate from the grant of copyright (as per the contract).

The above statement should be made with one caveat. Although the authoring assigns copyright to the client, the author will still retain the *moral right* to object to derogatory treatment of his work since this right has not been waived in the contracts. Note that derogatory treatment means any treatment which distorts or mutilates the work, or is prejudicial to the honour and reputation of the author. It also means activities that would offend the author, and in the context of Global Campus material this may mean reducing the quality of a work by altering the literary style (e.g. making unreasonable additions or deletions, etc). It must be noted, however, that the law makes an exception to this right (S80(4) CDPA 1988) where a work is made for publication in a collective work of reference; we think GC materials will possibly qualify under this exception.

2. Requests from Global Campus partners to licence the material to them to copy in their own countries *for their own use*

This topic covers a number of issues, including: pricing, control of number of copies and control of quality of what is to be printed or electronically copied in MU's name. It has been clear so far that such requests for local printing were motivated by the desire to lower the price per unit. In arriving at a price per unit, MU considered the overall cost, reasonable return on investment and quantity required. MU also differentiated between the price for the learning package that included access to the online environment and a package that only relied on CD-ROM and hard copy.

MU was however unable to arrive at a price for licensing the re-production of *unlimited* copies of the material. The policing of such arrangements is costly and local legislation was always difficult to clarify. One partner that requested to copy the material locally stated in writing that there *is no copyright law* in that country – this naturally did not inspire confidence in pursuing this arrangement further.

MU allowed one overseas “reputable” state university (in South Africa) the use of Global Campus electronic material as it appeared on the CD-ROM, but with no access rights to the Global Campus learning environment (WebCT etc). This was only for their students with no rights to future versions. The justification for allowing this was that MU had links with the Computing Science department at this university through a former lecturer at Middlesex, bringing some element of “trust” to the arrangement.

This issue also raises interesting questions about “fair use” in the context of IPR and e-learning – that is, the idea of a wider population being able to copy a certain proportion for the purposes of “teaching, scholarship and research”, as in the case of text books/journals.

Wider issues of social responsibility

There is a wider issue as to whether the Global Campus programme could or should pursue some “socially responsible” commitment in this respect (in the same way as other businesses do), but there is a danger of exploitation of such a gesture, especially where copyright is not a concept in the culture (and formalised in law). However, the risk of exploitation is somewhat mitigated by the “shelf life” of the material, which is often limited (but not always limited, not even in technical areas).

It might be useful for the study group to consider initiatives by content providers to provide learning content to developing countries. British Council or other development work (UNESCO etc) could be analysed, but such topics are out of scope for this report.

3. Managing Copyrights of third party material used in the e-learning programme and issues arising of tracking limitation of use and multiple use

Third party copyright material is used in Global Campus material, even though authors are discouraged from its gratuitous use; and there are forms, procedures and administrative support in place to facilitate this. Clearance is usually given in almost all the cases but has different conditions attached. Some of these conditions include restriction of use to MU students only, time limit on use, etc. In some cases MU had to renew clearance every semester, and use only a specified number of instances/copies.

However, as the Open University knows well (but many universities do not, yet) as a university scales up its e-learning or distance learning offerings, this process can become expensive, cumbersome and labour intensive.

MU asks staff to fill in a form if such clearance is required. The form is one of the documents cited. It would not be unreasonable to ask the person requesting such clearance to articulate the need for and importance of what is being requested. This need can then be assessed and alternatives may be considered subject to price and favourable conditions.

Such forms can no longer focus purely on paper materials. Due to the storage of information on many forms of digital media, universities may need to include them in addition to books and journals (e.g. text, graphics from websites, CD-ROMs etc)

MU is currently encouraging MU staff to be “original” and to minimise use of third party material. This change has not always been welcomed by authors.

In the early days of the Open University minimisation of use of third party material was not an issue. In more recent OU experience, each course team included a publishing editor who helped identify copyright problems. Use of third party diagrams and tables is still common, and deemed necessary, and is not believed by authors to cause many problems; clearance is dealt with by a large and competent copyright department at the OU. Authors used other sources if they were cheap or free and acknowledged them. However, it should be noted that at the OU, the culture is different: writing materials is the job, not an add on to the job.

At SHU, minimisation of use of third party material was implicit policy but our informant does not recall any explicit guidance. The study group might wish to check what is current policy in the sector.

- **Managing MU staff IPR and moral rights where content is used in more than one programme and where its used by other University's staff in other parts of the e-learning programme**

MU dealt with this in the context of contracts signed by authors, original contracts of employment for staff on full-time or fractional appointment and the MU IPR policy. There are two versions of author contracts that are signed by authors (old and new). The new one is issued via MUV – MU Ventures. (This is a typical vehicle used by most universities, including for contracts with UKeU, for commercial and VAT purposes.)

4. **Reuse of software artefacts developed by our technology partners in new programmes or exploiting these generically beyond the original purpose for which they were originally designed.**

This situation is much more specific to MU in that most other UK universities appear to run either a home-grown, open source or bought-in (e.g. from WebCT or Blackboard) learning environment, rather than the more componentised and multiply-sourced environment that the Global Campus runs. Thus this subsection may not be of general interest.

MU has had different types of contracts with its various software development contractors.

The first contract was with RITSEC (an overseas not for profit organisation in Egypt) where MU did not pay any money up front but RITSEC received a share of the income for three years. This worked well for both parties as the risk was shared but represented a problem after the third year where RITSEC expected the contract to be renewed. However, the key clause is:

RITSEC shall own the copyright in the Global Campus Courseware and hereby grants to the University an irrevocable licence to use the Global Campus Courseware during the term and after the termination of this Agreement.

The second contract was with Western Consulting, a UK-based organisation, for the development of managing the assessment of students MSc and final year projects. MU simply said that all IPR belongs to MU. This is standard practice; but some software companies resist this simple approach.

The third contract was with another UK-based organisation, which developed a new interface and some multimedia templates. The organisation wanted to keep the IPR for the multimedia templates and would not release the source code unless MU agreed to this. Software developers usually retain IPR unless they are explicitly assigned in a contract, hence the practice of the organisation is not unusual in the trade. It is interesting that as the “artefacts” approach the design end of the spectrum, the IPR moves towards norms more prevalent in that sector. In the end, after negotiation, the organisation agreed to license these templates to MU at a much reduced price for further use but on a module by module basis. MU agreed this for three modules informally but no formal contracts were signed as MU intends to develop its own templates. At the end of the day it is a business not a legal question as to whether it

was wise to agree to the terms and conditions that the organisation proposed. To answer it would involve making financial projections regarding costs of alternative scenarios; Middlesex felt at the time that the decision was correct.

Many universities feel that it is more beneficial in the long run either (i) to hire someone in-house to develop software so that the IPR remains with the University, since the person would be developing the software in the course of his/her employment, or (ii) to contract a software firm prepared to transfer all IPR to the University. In the long run if the IPR is owned by the University the software product can be further enhanced or licensed at the desire of the University. The current immature state of VLEs means that this is particularly useful – it might be different for mature products.

The fourth contract is with a new company (let us call it NewCo) under terms where all IPR belongs to MU. However, there are some issues which suggests that this contract may not provide sound guidance for future contracts. In particular, in the contract, point three under ‘General matters’ states that NewCo shall own the copyright in the Global Campus courseware and grants the University an irrevocable licence to use the software. However, this begs the question of how the Global Campus Courseware differs from the Module Material (which the University owns). Note that the irrevocable licence is not an exclusive licence; this implies that NewCo could license this product to someone else – nothing in the contract prevents NewCo doing so. Some might wonder whether this contractual term is a bit unreasonable. i.e. an irrevocable licence to use the GC Courseware during the term and after the termination of the agreement.

The last point under ‘General matters’ states that on termination of the agreement NewCo shall deliver up to the University all Module Material and Courseware. However, if NewCo owns copyright in the Global Campus Courseware how can they be forced to deliver it up? For example, what if they have another existing license agreement? (The contract was not for an exclusive licence.)

- **The need to have various types of contracts with different partners and with different authors. This include managing the different IPR issues regarding MU staff versus contracted staff from outside the university**

Currently all authors sign the same contract. There is an interesting issue whether MU should have different contracts for MU and non-MU staff. The main issue that concerned MU staff was the lack of financial reward if material authored by them were sold to non-MU students. This has been followed up in staff interviews, to check whether staff understand their IPR and moral rights under the global campus contract, MU IPR policy and the terms of their contract of employment.

There is no separate contract for reviewers – they sign the author contract.

- **How to handle detection of IPR infringement and how to prevent or reduce the risk of IPR and Copyright infringement and violations**

Currently MU relies on their authors to tell MU if they are using third party material, and on MU partners to make sure that software, artefacts and templates are not tied

into third party IPR or may have been developed for another client which has a claim over the IPR. MU provides training and guidelines to authors on this. However, in some instances, not surprisingly, MU has found out that this was not the case. It would be useful for the study group to see if this also occurs at OU, SHU and other relevant universities. It is not known to have been a problem at UKeU but that had only a year of operation with live students and that may have been not long enough for problems of this sort to arise.

There is another interesting issue to explore, but out of scope for this report. What should a contract say about quality assurance on an author's work? If a quality check is done, changes might be suggested or made which change the original document. These can be of two types, at least. The reviewer may believe the content is technically flawed or incorrect (or just wrong) and so change the text. Alternatively, the reviewer thinks the text is pedagogically unsound and makes changes. Is the author consulted, are changes made with or without the author's consent? What is the IPR view of the new text?

- **The design of a reward mechanism that motivates staff to be involved in e-learning authoring and development while assuring them that their IPR will not be unreasonably exploited.**

Currently, there is no reward mechanism for giving authors any further payment beyond what they receive for work which they have been contracted to do under GC. This was followed up in interviews – in general authors were not happy with that. There are reward mechanisms in theory but they have not so far been activated.

B) Options/Solutions/Advice

This subsection asks us to summarise the flow of thinking involved in managing IPRs in the project – i.e. What were the first thoughts? And what did that lead to? What would you do differently if you were starting again from scratch?

We are asked to write this subsection from the point of view of another, similar programme which has not yet considered IPR. What questions would they have and what suggestions would you give to them?

- How were the challenges overcome in this project?
- How else could they be overcome?
- What processes would you recommend?

This is covered in the Introduction and the section on development process. Some further pointers to an answer are given in section 7 A) above.

However, we must draw some caveats before any general lessons are drawn.

First, there are very few UK HE-based international e-learning programmes (as opposed to funded projects of limited life), thus any conclusions would be very tentative.

Second, only two such programmes have been considered by the study group, namely the Interactive University and the Global Campus.

Third, we feel that MU Global Campus is more complex than the IU and the few other UK HE international e-learning operations in that its core software was developed internationally and its content is converted internationally into appropriate e-learning formats. In more detail, authors from several countries are contracted by MU to author Learning Material according to the GC learning model (SCATE). Once the material is reviewed and approved it is then converted to the online template by RITSEC or CDSM according to the technical specification developed by both CDSM and RITSEC and approved by MU. (See author contract for more information.) Lessons drawn from this experience would be in our view be as yet of very limited applicability.

C) Further Work

This subsection asks us to identify any issues associated with IPRs in International eLearning which could benefit from further investigation.

One key issue is that none of the leading international consortia that impact on the UK have been studied in this round of work. The main consortia are Universitas 21 (U21), the Worldwide Universities Network (WUN) and the Global University Alliance (GUA). However, it would be unwise to focus too much on consortial models, as the evidence is building that they are less successful. This is probably because of the complexity of dealing with a number of autonomous organisations, with the particular complexity of consensus decision-making being an obvious area for problems to develop.

Secondly, the study project has studied only one of the large single-university programmes, namely Global Campus. (We would consider IU as essentially consortial, on a small scale.) Other successful and well-known single-institution models can be found at Robert Gordon, Ulster and Liverpool.

Thirdly, it is not clear that the international IPR situation is well-documented at the Open University and London External – even if that is the case internally, little documentation is public.

Finally, UKeU spent a lot of effort on international aspects of its operation, and it is likely that there are lessons in their archive of material.

More specifically, issues that are of immediate interest to the sector include:

- Impact of open source development models for software.
- Impact of repositories, in particular the JISC JORUM X4L Phase 2 initiative for e-learning content, in the context of MIT OKI and other US “open content”.
- Impact of rights of non-academic staff (designers, editors, programmers etc) – OU experience could be useful here.

- Impact of quality assurance and editorial regimes on the IPR and moral rights of authors.

Other, more strategic, issues that we feel the study group should discuss include:

- EU Copyright Directive.
- Lessons that can be learned from the attempts to sell NLN content overseas and the closure of overseas Ufi activities, as there seem to have been some IPR aspects to these.
- Lessons that can be learned from the UKeU experience in IPR matters (UKeU was represented on the HEFCE/UUK/SCOP IPR working group).
- Lessons that can be learned from international consortia such as U21, WUN and GUA – none of these consortia were analysed by the study group.
- Lessons that can be learned from the change of approach at NHSU.

8. Final Report Structure

The document template supplied was in our view not well-structured in terms of styles, and type size was inappropriate in some cases especially in tables. Hence, we made modifications in order to provide a readable and well laid out narrative.

9. References

MU sources of information are listed in Table 1. All such documents are commercial in confidence.

Other sources of information include:

- Copyright and Fair Use in the Classroom, on the Internet, and the World Wide Web, <http://www.umuc.edu/library/copy.html>
- Overview of Intellectual Property by the JISC Legal Information Service, 2001, <http://www.jisclegal.ac.uk/ipr/IntellectualProperty.htm>
- Intellectual property rights in e-Learning programmes: Report of the Working Group, February 2003, http://www.hefce.ac.uk/pubs/hefce/2003/03_08.htm
- Summary of accredited partner agreement, UKeU, 2003. (However, note that at the time of writing this report, UKeU material is still embargoed until HEFCE and the Higher Education Academy decide on the archiving and publication policy recommendations contained in the report “Final Report of the Scoping Study for Cataloguing and Selective Release of UKeU Documents”, Bacsich, December 2004.)

10. Contractual and other Confidential Material

Since this report is destined to be published, there are no appendices of contractual or other confidential material. Some contractual material was supplied to Intrallect, in confidence.

A) Licences

All relevant licences, contracts, and terms of agreement collected during the course of this work have been analysed and quoted from where relevant. However, the full text of these is commercial in confidence.

B) Reports

Key parts of internal reports have been incorporated. The full reports are commercial in confidence.