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## Reading, Writing, and Regs

**As online education takes off, the legal issues start to take shape.**

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Stanford University professor Daphne Koller believes that the next Albert Einstein may be sitting in an African village, without access to college classrooms. Koller also believes that education is a fundamental human right. So she and other pioneering pedagogues are taking university courses into global classrooms online.

Last April, Koller cofounded a free online site called Coursera.org, which offers 213 courses from 33 top universities. At press time it was already reaching more than 2.3 million enrollees (and was growing by about 70,000 per week).

Course offerings run the gamut from biology to computer science, health to economics, education to film. Pupils can learn how to build an information risk management toolkit with professor Barbara Endicott-Popovsky of the University of Washington; explore the galaxies with cosmologist S. George Djorgovski of the California Institute of Technology; or search for extraterrestrial life with astrobiologist Charles Cockell of the University of Edinburgh.

And Coursera isn't alone. There are other sites offering college courses, such as Udacity, cofounded by a former Stanford professor who says he used to teach 200 students per class and now aspires to teach 200,000; and edX, which was formed by Harvard University and the Massachusetts Institute of Technology and now has four more universities on board. These three offer so-called massive open online courses, or MOOCs. Some individual schools offer regular courses with more limited enrollment.

With all those classes go a host of legal challenges. Some of these already exist in traditional education, such as protecting the intellectual property rights in course materials. But other legal issues relate to new technology and the Web. For example: How do you navigate regulatory



requirements that differ from state to state and country to country? And how does your legal team keep up with legal challenges that accompany ever-changing technology and mushrooming online enrollment?

Koller, a computer science expert, admits that the law is not her forte. But she already had a brush with it last October, when Minnesota's Office of Higher Education said that Coursera.org did not have permission to teach in that state. "Minnesota's regulation was written 15 or 20 years ago to protect residents from low-quality, high-cost providers and predatory practices," Koller explains. "The problem was the fact that it was applied to free online courses from top universities." A huge public backlash convinced Minnesota officials to back down and allow Coursera to continue its offerings in that state.

Her other legal issues have been more routine. She uses different outside counsel to handle different aspects. She used one to create the company last April, uses another for IP, and uses still others to negotiate agreements and licensing deals with university partners.

The legal world can grow even more complicated when the website charges a fee and offers course credit. Ian Pilarczyk, who directs Boston University School of Law's international business law program online, knows firsthand. From the outset of developing online programs, it's imperative to create clear IP policies, he advises: "Intellectual property is one of the thorniest issues with which universities have to contend."

Pilarczyk explains some of the complications. Under some models the instructor retains ownership of the syllabus and course materials that she has created, just as in traditional teaching. But sometimes the university may reuse or revamp materials or use new instructors. In those cases, Pilarczyk notes, the school may hold a license, or instructors will grant it long-term or permanent rights. "I think that generally faculty are paid for both course development as well as teaching," he adds.

The IP questions are "incredibly complicated," agrees Richard Matasar, a vice president at New York University who oversees its online projects. Exactly who owns the material for NYU's hundreds of course offerings varies, he says. And material obtained elsewhere requires the university "to go through classic patent and copyright deals."

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The other tough issue for Matasar is state regulatory requirements. The first step in developing online courses is a state-by-state analysis of regulatory demands, he says. As a former dean and professor at New York Law School, Matasar understands the importance of compliance with rules. To navigate the legal landscape, he works closely with the office of NYU general counsel Bonnie Brier, who referred other questions to outside counsel Michael Goldstein.



For Goldstein, coleader of Dow Lohnes's higher education practice, IP issues remain the number one concern for online offerings. Ownership in the online world continues to be problematic, he says, and the answers depend on whether content is developed by faculty or by others. "They are fairly complex legal issues, and not entirely resolved yet," Goldstein adds.

And he agrees with Matasar that regulatory problems are pervasive. He notes that education experts are working on a state reciprocity act that may resolve some of the state-to-state variations and requirements. But he doesn't see that coming together in the near future. "It will probably get worse before anyone finds the solution," Goldstein predicts.

Any such agreement in the United States still won't resolve regulatory issues internationally. And that area is moving in two directions, Goldstein says. Sending courses abroad, an American university can partner with domestic institutions in other countries, letting them deal with the compliance headaches. But that creates more transactional issues, he explains. "And there is a vast market for our courses overseas," he notes, "where we're seen as the gold standard in higher education."

In the other direction, Goldstein says more foreign institutions are seeking to explore the U.S. market via the Internet. Online education "could become a very competitive environment," he says, even though everyone seems to still be struggling with finding the right financial model. Competition from abroad, Goldstein says, will undoubtedly create international trade issues.

Other legal challenges abound for online courses. As examples, Goldstein mentions privacy, accreditation and grades, issues with student aid, and possible liabilities if an institution fails to meet U.S. Department of Education requirements on everything from course content to the tracking of students.

Most experts agree that novel legal issues will continue to emerge. But in the new frontier of online education, no one is quite sure what or where. "It's like asking what did the world look like before radio, or before television," NYU's Matasar observes. "We are only beginning to see its power in this space."

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