

Elearning-Related Laws and Court Cases

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Abstract

As of the year 2008, university-level eLearning, K12 eLearning, and corporate eLearning are offered in developed and developing countries. For example, in the US, there is no field of studies in which eLearning is not used and more than half of students in the State of Florida have taken at least one eLearning course. Therefore, eLearning-related laws have been passed and eLearning-related court cases have been filed. This paper presents samples of eLearning-related laws such as the US Internet Equity and Education Act of 2001; Thai Law to Legalize eLearning; law to require eLearning at the State level; Copyright Law; Digital Millennium Copyright Law; Technology, Education and Copyright Harmonization Law; Family Education Right and Privacy Law; and eCommerce Law. Also discussed are eLearning-related court cases such as Learning Management System patent dispute, University of Phoenix fined US\$ 280 million in fraud case, court cases at Capella University, court cases concerning DeVry University, a US\$ 49 Million court case against Kaplan University, and an eLearning company fined for discrimination against a blind IT manager.

1. Introduction

Many papers on eLearning are available [1-9]. Some of the earlier laws did not recognize eLearning or even made eLearning illegal. By the year 2008, all countries have provided or are in the process of providing eLearning. Therefore, new laws may have to be passed and existing laws modified to cover eLearning. This paper presents examples of eLearning-related laws, such as new laws to make eLearning legal, new laws to require students to take eLearning

courses, modifications of existing laws to facilitate eLearning, and applications of existing laws to eLearning. Also discussed are eLearning-related court cases such as Learning Management System patent dispute, University of Phoenix fined US\$ 280 million in fraud case, court cases at Capella University, court cases concerning DeVry University, a US\$ 49 Million court case against Kaplan University, and an eLearning company fined for discrimination against a blind IT manager.

2. The US Internet Equity and Education Act of 2001

Prior to the year 2001, eLearning was not completely accepted by US laws. For example, to be eligible for federal financial aid, students had to satisfy the “50% Rule” and the “12-Hour Rule”. The “50% Rule” required students to take at least 50% of learning in the classrooms. The “12-Hour Rule” required higher-education programs that did not operate in a standard semester, trimester, or quarter system to offer a minimum of 12 hours of course work a week. That regulations were killed by the Internet Equity and Education Act of 2001 [10]. Providers of eLearning services had been calling for abolishing the regulations for several years and finally considered the Internet Equity and Education Act of 2001 the US law to make eLearning as legal as the classroom-based learning.

3. Thai Law to Legalize eLearning

On April 25, 2002, the author proposed and got approval from the Board of Trustees of Assumption University (AU) to establish the first eLearning college in Thailand called the College of Internet Distance Education and announced that the College would eventually serve 100,000 students per year, making a net

profit of about 4 billion Baht per year [11]. In the year 2002, he also met the Prime Minister at that time and proposed to him that Thailand legalize eLearning. The Prime Minister agreed and advised him to start the process. So, he sent a letter to the Minister of University Affairs asking permission for Assumption University to offer its degree programs in the eLearning mode. He also authored the first draft of the first eLearning decree in Thailand. The government established a committee to consider the law and he was invited to be a member.

Rev.Bro.Dr. Prathip Martin Komolmas who is the President Emeritus, Rev.Bro.Dr. Bancha Saenghirun who is the President, and the author who is the College CEO went to see the Minister of University Affairs and tried to convince him to support eLearning.

In his capacity as the Founder and Chairman of ABAC Poll, the author ordered an eLearning survey in 2003 which founded 77% of the sample were interested in continuing their education through eLearning. On November 26, 2003, the Ministry of University Affairs organized an open hearing on the eLearning law. In his capacity as the President of the Computer Association of Thailand under the Royal Patronage of HM the King, the author presented the draft law in the morning and chaired the open hearing in the afternoon. The results were used in modifying the law.

In August, 2004, the author was elected Chairman of e-ASEAN Business Council. At that time, the Thai Government has not passed the eLearning decree. So, he tried to get help from ASEAN. He proposed to the ASEAN Ministers that eLearning be promoted by all ASEAN member countries and the Ministers agreed.

the author sent many letters to the authorities. Dated 23 September 2002, he sent a letter to the Minister requesting permission for AU to offer eLearning. Dated 15 September 2003, he sent a letter to the Prime

Minister to speed up the eLearning decree. Dated 14 March 2005, he sent another letter to the Prime Minister that Cambodia was ahead of Thailand on eLearning and Thailand should pass the eLearning decree as soon as possible to be ahead of Cambodia.

After 3 years, 5 ministers, and many revisions of the eLearning law, it was published in the Royal Gazette in October 2005. AU became the first to offer a complete eLearning degree program and that was in January 2006, i.e. Master of Science in Management and the author was the Program Director, 2 more eLearning Masters' degree and Ph.D. in eLearning Methodology which is the first such Ph.D. in the world. Then, in June 2006, the International Biographical Centre in Cambridge, UK, named the author the Father of Thai E-Learning.

4. State-Level Law to Require eLearning

The State of Michigan of the US is the first to pass a law requiring every student to take at least one eLearning course [12].

On December 13, 2005, the State Board of Education adopted a plan requiring that all Michigan students cannot graduate with a Grade 12 certificate without completing 18 credits in English, Mathematics, Science, Social Studies, Visual and Performing Arts, Health and Physical Education, and World Languages.

Effective April 2006, all Michigan students must take at least one eLearning course to complete all the requirements for Grade12. Michigan Virtual University (MVU) joined with Blackboard Inc. to deliver eLearning to 450,000 Michigan high school students during the next 3 years thru Michigan Virtual High School (MVHS).

With Michigan passing a law requiring high school students to take at least one eLearning course, other States will probably consider similar law. If the US Federal Government passes a law to require eLearning, other countries may also have serious consideration to compete.

5. Copyright Law

The first copyright law of Thailand was drafted by a committee chaired by Phraya Nittisatra Baisalya (Mr. Von Charmonman who is the father of the author). The copyright law applicable in Thailand in the year 2006 is a modification of the earlier version and the working group responsible for the computer-related modification was chaired by the author of this paper. Similar to copyright laws in most countries, there are exceptions such as fair use, and making a single copy for personal education and research.

In a face-to-face class, a professor may display a copyrighted textbook on the screen and teach or make explanation from there. In an eLearning class, a professor cannot legally digitize a copyrighted book to be shown to students thru the Internet [5, 6, 7, 9]. Textbooks, magazines, and all kinds of printed materials have been used in the face-to-face class by asserting fair use. In eLearning case, the assertion cannot be claimed under the copyright law and permission or licensing may have to be obtained and paid for.

6. Digital Millennium Copyright Law

The DMCA (Digital Millennium Copyright Act) was signed into law by former US President Clinton on October 28, 1998 [13]. It implemented WIPO (World Intellectual Property Organization) treaties the US signed in 1996. They are the WIPO Copyright Treaty and the WIPO Performance and Phonograms Treaty. DMCA specifies the term for instructors and students to use email, website, and other Information Technology at their university. For example, if the course website allows students to download any web content, either texts or multimedia, the instructor could be liable for copyright infringement unless he takes the precautions prescribed in the DMCA.

7. Technology, Education and Copyright Harmonization Law

Thailand and other countries should follow the US in introducing a law similar to

“The TEACH Act (Technology, Education and Copyright Harmonization Act 2002)” [14] which were signed into law by the US President on November 2, 2002. It clarifies what usages of copyrighted materials are permitted with regard to eLearning. It also outlines what requirement the eLearning provider, faculty members, staff members, and students must abide by in order to be in compliance with the law.

In 1998, the US Congress directed the Copyright Office to submit a report what should be done to facilitate the use of digital technology in eLearning. The Copyright Office recommended significant changes and a bill to that effect was introduced in March 2001.

For example, the TEACH Law authorizes the educators to digitize copyrighted works for use in eLearning but would have to pare down some of the materials. In particular, a musical work may be shown in full in the classroom mode of learning, but in eLearning mode, it must be shown only as clips. The TEACH Law allows performance and displays in the classroom mode of learning, but not digital delivery of the same materials for the eLearning mode. Supplemental reading materials also cannot be made digitally available for eLearning students.. The TEACH Law allows the followings:

- (1) Transmitting performances of all of a non-dramatic literary or musical work, e.g. a poetry or short story reading may be shown in full but a drama can not.
- (2) Transmitting reasonable and limited portions of any other performance, e.g. films and videos of all types.
- (3) Transmitting displays of any work, i.e. still images of all kinds, in amounts comparable to typical face-to-face displays.

The TEACH Law applies only to accredited nonprofit educational institutions

and not to for-profit virtual universities or corporate eLearning.

8. Family Education Rights and Privacy Act

There are many privacy-related laws in the US and the one concerning education is the Family Education Rights and Privacy Act (FERPA) [15]. Its effective date was November 19, 1974. This Federal law protects the privacy of student education records. Parents do have certain rights if the student has not reached the age of 18. Generally, eLearning providers must have written permission from the parents or students to release any information from a student's education records. FERPA allows eLearning providers to disclose those records without consent under some conditions, such as to other schools to which a student is transferring, to specified officials for audit or evaluation purposes, to appropriate parties in connection with financial aid to a student, to accrediting organizations, and etc.

9. eCommerce Law

In the paper entitled "The eBusiness of eLearning" [9], it was said that providing eLearning services may be considered eBusiness just like any other business enterprises. The concept of eBusiness includes the back-office part and the front-office part which is eCommerce. There are all kinds of rules and regulations to be shown on the web pages concerning eCommerce, such as

- Information about the eLearning Provider, such as name of the institution, address, email address, telephone and fax numbers.
- Information about the Prices must be clear and unambiguous, e.g. cost per quarter or semester credit, and all other costs.
- Contract Completion, i.e. it must be clear when contract to apply for a course or a program is completed. The provider must give acknowledgement promptly and the student must be able to retain a copy of the contract.

- Prior Information such as description of the course or program, payment, delivery of services and quality assurance.
- Concerning cancellation, there must be mandatory cancellation period during which a student may withdraw from the program and gets full refund. It should be noted that the eLearning provider may announce that cancellation cannot be done after the service has begun.

10. Learning Management System Patent Dispute

According to chronicle.com, the US Patent and Trademark Office in March 2008 issued a preliminary decision that rejects all 44 claims Blackboard Inc. made regarding its Learning Management System. That decision is the reversal of the Office earlier in January 2006 awarding a patent to Blackboard and announced it in August 2006. The patent established Blackboard's claim to some of the basic features of the software of eLearning [16].

Michael Feldstein, Assistant Director of the State University of New York (SUNY) online learning network has been criticizing Blackboard for using the patent to block academic progress.

Right after the patent was announced; Blackboard sued Desire2Learn from Ontario, Canada, for infringement and asked for royalties from Desire2Learn.

The software for eLearning in the patent is "Learning Management System" or "LMS". Blackboard has the largest market share of commercial LMS software, followed by eCollege and Desire2Learn. Others use open source software like "Moodle" and "the Sakai Project".

Feldstein and other academicians have tracked the history of virtual classrooms back to 1945 which were before Blackboard started its project at Cornell University.

On February 22, 2008, a federal jury in Lufkin, Texas, judged Blackboard the winner in the case against Desire2Learn in the

eLearning patent suit and in March 2008, the judge issued an order banning Desire2Learn from selling its LMS in the US.

During the trial, Blackboard called on a professor of electrical and computer engineering at Virginia Tech to serve as an expert witness to prove the specifications of its patent. Desire2Learn called on a professor at the University of Delaware to serve as an expert witness who stated that he created “Serf” a web-based distance education environment in 1997 which was prior to Blackboard’s introduction of its virtual learning system.

After a two-week trial, it was found that the patent was valid but that Blackboard should be awarded only US\$ 3 million instead of the US\$17 million Blackboard claimed.

After the judgement, Desire2Learn appealed and the Patent and Trademark Office resumed the consideration of the patent and announced the preliminary ruling. Desire2Learn hoped it would not have to pay anything to Blackboard.

11. University of Phoenix Fined US\$ 280 Million in Fraud Case

On January 16, 2008, a federal Jury in Arizona, USA, found the Apollo Group guilty of misleading investors. Apollo Group is the parent company of the University of Phoenix which has the largest number of eLearning students in the world. After a two-month trial, the Jury deliberated for two days and concluded that Apollo executives had misled stockholders when they withheld a 2004 report by the US Department of Education that criticized the aggressive recruiting practices at the University of Phoenix [17].

In September 2004, the US Department of Education issued a 45-page report describing corporate culture focusing too heavily on boosting enrollment. The report was based on site visits and interviews with more than 60 employees. Examples are compensation and sale practices ranged illegal to unethical to aggressive. About 60% of

Phoenix’s tuition revenue came from financial aid from the US government. The Department of Education has strict rules against paying recruiters based on the number of students they enroll. Some recruiters were told they would be fired if they could not meet the target. The Department of Education stated that University of Phoenix was in violation because it hires its recruiters with the promise of lucrative compensation for success in securing enrollment, maintains a recruiter evaluation and salary system that provides incentive payment based on success in securing enrollments, provides substantial incentive to its staffs to recruit unqualified students, and systematically and intentionally operates in a duplicitous manner so as to violate the Department’s prohibition against incentive compensation while evading detection. Some of the above violations are also against the US False Claims Act. Finally, the University of Phoenix agreed to pay US\$ 9.8 million without admitting guilt.

In the year 2003, two former admissions officers also filed a lawsuit against University of Phoenix that the university violated the False Claims Act by certifying that it was complying with all federal guidelines when it applied for Pell Grants and other federal funds, and seeking US\$ 1.5 billion. The False Claims Act permits individuals with exclusive knowledge of a fraud perpetrated against the federal government to file suit on behalf of the government and share in any financial recovery. The violator must pay the US civil penalties and triple damages. The admissions officers stated that the US\$ 9.8 million fines did not resolve any possible claims under the False Claims Act. The university tried to have the case dismissed, including an unsuccessful appeal in the US Supreme Court. The lawsuit is schedule for trial in September 2009 [18].

From Apollo Group, Inc. and Subsidiaries Consolidated Statements of Income for the year ending August 31, 2008,

the net revenue was US\$ 3.14 billion, and the net income was about US\$ 476 million [19].

12. Court Case at Capella University

Capella University is a private for profit virtual university in Minneapolis, Minnesota, USA. It offers from Bachelor's to Doctoral Degrees in Business, Technology, Education, Human Service, and Psychology. It is owned by the publicly traded Capella Education Company. It has over 22,000 students from all states of the US and 56 countries. There have been many lawsuits against and by Capella University [20], such as:

- Marry Swenson (student) filed a lawsuit in 2007 accusing Sharon Bender (instructor) of plagiarizing the student's work.
- Capella University suing Executive Risk Specialty Insurance Company in 2006 for claim which has been denied.
- La Marca (student) filed a lawsuit in 2005 against Capella University for intentional discrimination against student with disabilities.
- A Capella University Enrollment Director in 2006 sued Capella University for harassment and discrimination. The case was settled out of court.
- Venture Forward Inc, et all in 2003 sued Capella University for copyright infringement.
- Pinpoint Interactive in 2003 sued Capella Education for copyright infringement

13. Court Case Concerning DeVry University

DeVry University is owned by DeVry Inc. It opened in Chicago, USA in the year 1931 by Herman A. DeVry. It is regionally accredited by the North Central Association. In 1995, DeVry was suspended from Ontario's student loan program after a large number of its students misreported their income. DeVry was reinstated after paying fines of CAD \$1.7

million and putting up a bond of CAD \$2 million.

In 1995, students of DeVry's Toronto campus filed a class-action suit claiming poor educational quality and poor job preparation [21]. The suit was dismissed on technical grounds. In November 2000, graduates of DeVry, Chicago campus filed a class-action lawsuit accusing DeVry of: widespread deception, unlawful business practices, and false advertising. The lawsuit contributed to 20% slide in company's stock. The class was not certified. The case was resolved for less than \$ 25,000 in June 2006. In April 2007, DeVry settled the Case by agreeing to refund \$88,122 back to students.

14. A US\$ 49 Million Court Case against Kaplan University

Kaplan University was established in 1938 by Stanley Kaplan, in New York City, USA. It was later sold to the Washington Post Company. It has revenues of US \$ 2 billion in 2007. The court case was a class-action lawsuit that Kaplan and another provider of bar review courses overcharged students from August 1, 1997 to July 31, 2006. Kaplan owns the Law School Admissions Test (LSAT) [22]. Kaplan denied the allegations and settled without finding of wrongdoing. Under the terms of the settlement, Kaplan and the Co-defendant deposited US \$49 million into an interest-bearing account for the benefit of the class: pay for the attorneys' fees and refund of not more than 30% of the amount paid by each student.

15. Elearning Company Fined for Discrimination Against a Blind IT Manager

In November 2006, the Reading Employment Tribunal in the UK ruled that Project Management International (PMI) failed to make reasonable adjustment for a blind IT manager named Sumaira Latif to access a computer-based examination in the UK. PMI is

a US certification body thru eLearning programs. The ruling was the first one against a provider of eLearning content under the UK Disability Discrimination Act [23].

The case was supported by the Disability Rights Commission. The case claimed that PMI discriminated against the blind IT manager in three ways: by making unreasonable demands to confirm that she suffered a disability, by failing to provide accessible course material, and by failing to make reasonable adjustment for her to sit the final examination.

The first two claims were dismissed by the Tribunal but agreed that Latif suffered discrimination mainly because some of the questions included complex graphs and charts which would be difficult for a blind person to comprehend. The candidates must sit for the examination and access the examination material at one of the test centres. Latif requested to use a screen reader in the examination room and was refused.

Her request for tactile diagrams of graphs and charts was also refused. She was given the option of either not taking the examination, or completing a paper-based version with the assistance of a human supplied by PMI. Latif passed the exam but was not satisfied with PMI action and filed the suit. The Tribunal awarded Latif a compensation of 3,000 pounds for the injury to her feelings.

16. Concluding Remarks

As of the year 2008, all levels of eLearning are offered in developed and developing countries. Therefore, eLearning-related laws have to be passed and existing laws modified to facilitate eLearning. Also, eLearning-related court cases have been filed such as the case related to the University of Phoenix, and several cases related to Capella University. The eLearning-related laws and court cases should be studied to prevent

similar problems for the benefits of all concerned.

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