

# Disruptive Education: The Role of Technology in Altering Delivery of Education

Fiona Robertson - Senior Counsel, Head of Media - Digital & Data  
- Dubai International Financial Centre

March 2017

---

The “ed-tech” sector is growing at a significant rate. Indeed some commentators are predicting the demise of the traditional delivery of education, and a complete replacement of that system by online platforms. But most appear to consider the introduction of technology into classrooms as augmenting rather than replacing current teaching methods, in a positive manner for both educators and students.

Either way, education providers are now at a point where they can no longer ignore the technology that is creeping into their businesses. And with those changing business models comes new legal implications – some small and some very large.

## **Content Production**

It is argued by some that institutions that only licence content from third parties are going to find that they are not able to compete alongside those that create their own content. Creating content means that the institutions can create branded content that promotes their brand. They will also not have to pay licence fees for quality content as they can use their own materials. But in addition, and most importantly, institutions will be able to use this content in ways that will generate income without any restriction from a licensee.

In some cases, the creation of content may mean simply taking the students to an appropriate wiki site, as an example, and having them upload their own materials into the site. These can range from having a school-wide Wikispace to contributing to a student driven global information sharing platform. Legally, it is important to ensure that both the teachers and the students understand that, in doing this, they are creating this content for common usage (usually under a Creative Commons licence). As the creator of that content, the author must specifically agree to the use of the content on those terms.

For educational institutions with bigger goals, the creation of complete sets of materials for students will become more desirable, and more commonplace. Whilst, on initial review, it may appear that the institutions are creating materials that could ultimately make them redundant as educators, in fact the interaction between the student and the institution will have increasing importance to those that are going to be assessing the value of the qualification. The institutions ultimately control the qualification that is provided to the students and, in controlling the content itself, they control the quality (and therefore the reputation) of that qualification. A Harvard Masters Degree will not lose the cache that it currently enjoys for as long as Harvard continues to insist on a quality curriculum, tough criteria for passing and the world’s most respected professors.

We know that teachers already create their own materials within the confines of the established curriculum but the addition of scripts and filmed materials is a new development. What controls do the teachers have over these new materials – will they need to be approved by a senior member of staff before use? How long can they be used for? Must the teacher recreate them for the next year or are they able to be used

repeatedly? Can the teacher use them elsewhere or is this an exclusive use contract? Does the institution in fact own the materials that are created in this manner? These terms that govern the creation of the content must be clear and unambiguous and each time a new component is added to their scope of work, then the employment contract may need to be revisited to ensure that it addresses all issues that the institution requires.

In this regard, it is interesting to note the existence of the UNESCO 2012 OER Declaration (also known as the “Paris Declaration on Open Educational Resources”) which was drafted to promote OER but also calls for all publicly funded educational materials to be released in a freely reusable form.

### **Online Content Distribution - Non Synchronous Content**

One of the earliest trends in digital education delivery systems was the MOOCs: massive open online classes. Anyone with an internet connection can now access materials and instructor videos as well as interacting with other students. In this scenario, your professor becomes a content producer, not only analyzing and researching the subject, but also writing the scripts and then delivering the content so that the institution can exploit it.

In addition, traditional educators are now also creating courses without physical class sessions. There are two types of online classes: those that have no synchronous interaction among faculty and students and those that use videoconferencing software to hold a real-time, synchronous class. Online programs with synchronous classes are the most expensive and labour-intensive to offer, but arguably provide the best online experience for the students themselves.

Whilst many institutions concentrate on the student terms of enrolment when they move to an online model, they may overlook this fundamental legal point within the contract with the creator of the content. The institution must own (or at least have an exclusive licence over) the content in order to legally exploit it. Similarly, the institution must maintain total control over the awarding of qualifications arising from the use of the materials. So whilst, for example, an online contract law course may be provided to all members of the public, it must be clear that this will not be readily credited towards the awarding of a degree.

### **Licensing of Content from Third Parties for use by Students and/or Teachers**

It is common for larger institutions to have procurement or accounts requirements that are tailored to the bricks-and-mortar education model. The licensing of technology is often not factored into the model or, if it is factored into the procurement model is it not done well, with no understanding of the usual licence fees or knowledge of common and reasonable licence terms.

Technology licensing terms are far too often driven by the suppliers themselves, which is not common in any other industry. Practically, this may not always end in a one-sided license for the institution, but on a realistic risk analysis, it is very likely to do so. Just a few key issues that have, anecdotally, often been overlooked in the past in contracts include:

- content updating schedules, leaving students with outdated content
- curriculum warranties, to ensure that content will continue to match curriculum
- current and ongoing ability for the software/content to interact with purchased hardware
- short licence periods meaning complete re-negotiation needed in a few years
- adequate training in the use of the technology and service
- ‘uptime’ minimums

Of course this will generally be completely overlooked for free technology and free interactive apps. Do remember however that these do come with terms of use that should not be exceeded. As they are usually provided on an ‘as is’ basis, then it is important that they are properly audited for suitability before they

are provided to students. There is no legal recourse if this is not done.

## **Privacy and Data**

Interaction online means the potential for extraordinary collection of data on the institution and its staff and students. This is now commonplace in the online environment and is something that needs to be understood and managed properly by institutions. Alongside this, we know that the providers of ed-tech want to secure more data so that they can drive the development of their products in the appropriate manner. The collection of data can have a positive outcome. This can range from the 'big picture' of real time tracking of a student's progress from the first day to last year, with the ability to statistically see when and if a student is struggling when compared against her former standards, down to a simple knowledge of whether the student actually opened the book within the e-reader or not.

However this may be done by the institution, openness is vital. It is important to know the laws applicable to the collection, storing and moving of such data in each country in which you operate. It is also important to let students know, by way of a data and privacy policy, what data is being collected and what it is being used for. It is extremely important to ensure that, no matter the strength or otherwise of the privacy legislation that applies in the jurisdiction, third parties that are providing content to your students are also complying with your data and privacy policy as well. In this region, data privacy laws are not as stringent as they are in, for example, USA or Europe. This may mean that institutions can take a more lenient approach to the collection, storing and moving of data but each must then determine the effect that this may have on their reputation with potential students within the international education market.

## **Conclusion**

We are still in the early stages of the transformation that technology is bringing to schools and universities around the world and the ultimate destination is still unclear. The 10-year olds of today, already receiving lessons on iPads each day, will expect the highest levels of well-curated educational content to be available to them on every device, as and when they require it. Competition for students will increase. Some institutions may not survive, others will change dramatically, however it seems clear that those that embrace and adapt to the new technology, and promote their use of that technology to potential students will be in the strongest position to lead the education sector in ten years time.

*Al Tamimi & Company's Technology, Media & Telecommunications team regularly advises on content matters both on-line and in traditional media, acting for producers, creative agencies and broadcasters. For further information, please contact Fiona Robertson ([f.robertson@tamimi.com](mailto:f.robertson@tamimi.com)).*