LEGAL ISSUES IN GLOBAL CONTEXTS

PERSPECTIVES ON TECHNICAL COMMUNICATION IN AN INTERNATIONAL AGE

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LEGAL ISSUES IN GLOBAL CONTEXTS:
Perspectives on Technical Communication in an International Age

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Considering Legal Issues
in Global Contexts

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It is not news that online media have shrunk the world and made it possible for technical communicators living in different nations and regions to collaborate on a range of activities. This kind of global reach allows projects to broaden in terms of who may participate in them and how. This reach has also allowed businesses to expand from local or regional operations to become participants in a growing global marketplace. Such opportunities for collaboration, however, require care in approaching workplace interactions, for with new contexts come new challenges, both anticipated and unexpected. In such situations, the more participants know about the variables affecting international interactions, the better they can anticipate certain problems or respond to others.

In expectation that cultural divergence could arise as a key factor affecting international exchanges, technical communicators need to prepare for potential conflict resulting from such differences. They must also prepare themselves to expect such situations to arise and consider strategies for negotiating the developments that could result from cultural difference. Fortunately, much has been made of this kind of preparation in the published technical communication research over the last decade. And these works have done an effective job of examining how issues of linguistic, operational, and cultural difference can create a variety of challenges that technical communicators might face when working in international venues. Yet within these discussions, the range of valuable publications on global interaction has not been augmented by an extensive treatment of the legal issues that can shape international inter-actions until now. Such legal issues, however, could be seen as one of the remaining barriers to affect the sharing of ideas and information in the modern global village.

In essence, the law's function is to dispense with conflict by regulating interactions between or among parties who are bound together through place or activity. The law's function is also to enable policy decisions. These combined features make the law a conduit of power used as a source of control. Moreover, in a world where online media have caused traditional barriers of time and distance to almost evaporate, it is the legal boundaries created by different nation-states that seem to impose the few remaining limitations on how information is exchanged in online global contexts. For these reasons, both academic and workplace technical communicators can greatly benefit from a resource that can provide a foundation for understanding topic areas in which legal factors play a pivotal role. *Legal Issues in Global Contexts* is just such a work, for it greatly enriches the work done in technical communication by contributing an important overview of a number of legal issues that affect technical communicators' work in international venues, particularly those created via online media.

To appreciate the importance of how legal issues affect communication in global contexts, one must first understand how the influence of power in legal interactions is even more pointed in international than it is in domestic venues. Domestic law is tempered by the immediate influence of the society in which it exists. It is a context in which the effects of regulation and of finalized decisions are directly perceivable by the population governed by such laws. Moreover, law reflecting public interest is often established on a foundation of an overriding aspirational mission. This mission helps ensure that those who apply the law adhere to the policies that are its purpose. If not, the citizens of the related society can generally turn to various legal or social mechanisms to address perceived misuses of the law. This tempered form of law is generated and employed for the greater good as a means to lead to positive outcomes for the public. It is a situation in which those who have power to influence its contours also help to shape its impact on those it touches.

International law, by contrast, is most often mediated among parties with economic interest as a central factor for negotiation. In such contexts, the greater public is generally removed from the crafting of legal practices and the considerations of legal policies. The general public, for example, is rarely (if ever) involved in the negotiation of treaties for international commerce. As a result, societal interest is not always considered in reaching a final compromise in such international negotiations. For instance, as Potts points out in her chapter in this collection, the inclusion of digital rights management (DRM) tools has significant implications for how we access information and on what we are able to do with that information once we have it. In fact, the very notion that DRM tools are embedded in the books, games, films, and other forms of creative expressions that embrace cultures is significant as an example of information control in broader global contexts. In this case, those individuals with little power have no recourse to reject an international legal decision that

affects them, and cultural construction at international borders is not fluid nor is it open.

Even in discussions about how to compromise in international treaties or administer international regulations to provide for the needs of all parties, finding means for such compromise is complex and difficult. Legal scholars, for instance, have argued in favor of extending the fair use doctrine in intellectual property to international intellectual property treaties. Scholars who support this change want treaties to provide public access to otherwise restricted materials as a means to support academic criticism, educational use, free speech, and other needs that allow for transactional and transnational interaction. Such ideas are founded upon principles in the U.S. Constitution and this legal perspective of access and information sharing makes fair use a powerful tool for supporting democracy and enabling egalitarian interaction.

The legal concept of fair use, however, is neither enabled by nor functional within international law because international law is not based on a constitutional structure to ensure its operation. In fact, a strong access-oriented policy in international treaties might even lead to more harm than good for under-represented entities in treaty negotiation. For instance, emerging countries' cultural assets in art, music, or herb-based medicine can also be their main sources for active interaction in the global community. The ability for such nations to protect these cultural assets from being usurped by more powerful global actors could be hindered by a fair use policy that fails to protect those whose bargaining power is weak. In response to such situations, I have argued that using a model based on a balance of power to allow international negotiation in consideration of humanistic goals is a more reasonable approach, regardless of how complex it would be. Yet to make this approach operate, those who ask for this kind of change would have to understand the intricacy of the legal issues that arise from related discussions.

Understanding the impact of legal issues in international technical communication requires being exposed to the intersection of the law, international venues, and the field. *Legal Issues in Global Contexts* provides a crucial first step for technical communicators by providing a range of vantage points from which to explore legal issues in international technical communication. And it does so by examining how such legal issues affect, or are affected by, various online media.

Now that technology enables the world's population to interact socially, economically, and politically, we must consider how the law that directs our actions in international venues might shape not only future interaction in international cyberspace but also cultural development and information access. In considering such issues, technical communicators need to remember that international law controls our ability to create and be supported by our innovations in international venues in the same way that domestic law controls our actions at home. If we want to participate in the world as global citizens, we will also have

to consider how our participation will be regulated, guided, and in some cases, restricted. We might derive practical benefits through our interactions in global markets, but we might also derive the more abstract benefits of cultural and political participation in the world's interactions. Issues of free and open speech, authorship, privacy, and information access form the basis of complex difficulties in domestic settings. These same issues can lead to even more complex questions in international venues.

For instance, Kraglund-Gauthier and Young's chapter notes that we need to be aware that once we use digital media, our privacy is less protected. By extension, of course, we should be aware of the fact that the digital media sending information to the world affects our privacy much more broadly than it would in local spaces. An idea that might form the basis of what seems to be local discussion can, when considered through interaction in digital form, be broadcast worldwide and engender a much broader global debate. But what might happen if, for instance, a student grappling with new concepts expressed ideas that might seem extreme to some of the participants in a discussion? In the more local, even if digital, learning venue in which the context of discussion would be well formed and the cultural constructs for discussion would be well established, the student's comments could be considered as a part of the process of exploration. In this kind of situation, a student might safely "test" the limits of speech. In so doing, the student might make potentially inflammatory statements in the heat of discussion as a way to test ideas. In the "private" venue of a classroom, the consequences of such testing would be limited. If, however, privacy were inhibited and the student's statements were broadcast globally, the impact of such statements could be extreme. On the one hand, such public contexts might make the student a target for retribution. On the other, these settings might create a false impression of the power of the statement as representative of a culture as a whole. And as Kraglund-Gauthier and Young point out, information can be relatively permanent when put online. Thus, statements that might have been pertinent and potentially even appropriate in a specific local context might lead to long-term negative effects in global venues.

Moreover, when we consider issues surrounding privacy in global contexts, we should also be aware that related communication concerns are not affected only by distance. Rather, cultural input and influence can greatly determine what might or might not be acceptable as a part of a global conversation. Controversies surrounding depictions of Muhammad are illustrative of such influences. To some, all depictions of Muhammad are sacrilege; to others, they are a matter of protected speech. In both cases, the culture of the individual markedly influences what is considered acceptable or not. Additionally, as Lunceford points out in his chapter, the emotional nature of our responses to issues such as these is made more complex by international online access that requires us to become aware of the rhetorical nature of the language we use when discussing ideas.

And the rhetorical context in international venues would have to be determined within a range of diverse cultural constructions.

Such concepts are made further complex when they take place in virtual worlds that represent alternate or parallel realities. Chávez-Aguayo, for example, writes about *Second Life* and considers how virtual and real worlds interact. I conjecture that globally accessible, virtual worlds such as Habbo Hotel, RuneScape, and World of Warcraft are precursors to new virtual worlds that could someday become a kind of "third places." These third places would be online spaces that help diffuse cultural difference by amalgamating multiple cultural characteristics as a basis for their formation and participant interaction. However promising a culturally diverse virtual world might be, legal questions would likely arise with regard to who would control these spaces and which country's laws would apply when and where. And in a global online context, who would provide or inhibit entry, what kinds of contractual arrangements would allow or inhibit interaction, who would control the intellectual products created, and how would they be controlled? Thus, the process of developing and participating in a culturally nonspecific global virtual world could quickly generate international legal questions that individuals need to consider in advance.

Other less abstract but no less complex questions include those observed by Batova, who points to problems with translation when sharing information across cultures. To underscore her call for improved legal literacy and more exact translation of terms in the law, I ask that we also consider another looming issue in legal literacy—the difficulty in finding means to translate connotations of legal terms when the conceptual structure behind them still is in stages of argumentation. A relatively mundane example is in the connotations of the word *monument* in international contexts. In an instance of collaborative interchange between American and Russian students in the Global Classroom Project, students decided to study cultural differences between monuments in St. Petersburg, Russia, and those in Atlanta, Georgia. During this project, the students experienced great difficulty in agreeing upon the subject matter for study, and they failed to understand where communications broke down. As it turned out, the Russian connotation of МОНУМеНТ is less inclusive than the English *monument*. Once the students understood where they differed in connotative understanding, they soon agreed to a common subject of study. Legal disagreements can likewise arise when terminology leads to a seeming agreement, but the parties later realize that their bases for agreement were on differing assumptions. These issues at the intersection of law, international interaction, and technical communication will thus become more critical as our global business interactions, educational efforts, and social exchanges continue to broaden.

Regardless of local or global context, there is an ongoing relationship between technical communicators and their community. These relationships require technical communicators to continually consider their roles as conduits of information, and such considerations affect what technical communicators do in different

settings. For example, Copenhaver, Vee, as well as Zemliansky and Zimmerman examine different aspects of intellectual property within a broader global context. Vee points to the limiting effects of patent law on educational software development, and Zemliansky and Zimmerman discuss how copyright law has changed approaches to developing new texts via digitization. Copenhaver examines legal developments in consideration of orphaned works and emphasizes the need for public access as a means for participating in the global community. In so doing, these authors, both individually and collectively, create a framework for understanding such issues.

The various topics and perspectives presented in the chapters of this collection create an effective collective mechanism for supporting discussion of power as a necessary accessory to participation in global legal negotiations. These collected chapters also provide a framework for understanding the various factors that can affect who will have a voice—or who might acquire a voice—when it comes time to debate legal issues that might affect the greater global community. By examining these issues, this text emphasizes a key central point: Those who work in global realms or cross physical borders through digital access are no longer merely citizens of their nations; rather, they have become citizens of the world. As such, they can influence the shape of the world in which they will interact. Yet they can do so only if they have power to introduce innovations to the world market, to affect negotiations for the rules of border crossing, and speak about choices that influence the lifestyles and livelihoods of the world community. As the different entries in this collection emphasize, the influence of legal choices can be significant. Thus, for technical communicators working in such contexts, an understanding of such legal issues has become essential to not only their success as professionals but also to their participation as citizens in a greater global community.

In closing, I suggest that if technical communicators have the power to shape the global community through their translations, business interactions, teaching, and writing, then they should do so with humanistic interests as their primary concern. Instead of focusing on what it takes to deal with cross-cultural conflict in crossing global borders, we might consider the vantage point of finding common desires for humanistic goals and develop cooperative efforts on the basis that humanistic needs, desires, and driving influences are commonly shared among global entities. If international law were established primarily on the basis of human needs and secondarily on the basis of market needs, then market needs would serve the people of the global community rather than in reverse. Addressing these various issues is no easy task, but the entries in this collection provide the reader with a framework for understating the central issues involved in such processes and provide readers with a mechanism for making informed and effective decisions for action in global contexts.

INTRODUCTION

Legal Issues in Global Contexts: Examining Friction Points on the Flat Earth

Kirk St.Amant and Martine Courant Rife

It has been said that we live in the era of globalization. If that is the case, then the slogan for that era is undoubtedly "The world is flat." And with each passing day, we are reminded of how new technologies are leveling the old barriers of time and distance to open a newer, flatter geography of global communication. It is a context in which individuals located on different continents can collaborate on project teams. It is a context in which music recorded in New York can be accessed in New Delhi within seconds of its creation. It is a context in which the very word "barrier" seems on the verge of becoming an anachronism. Or is it?

Oddly, as real barriers of physical space have been flattened by the human construct of cyberspace, another human-made barrier has emerged to limit inter-actions in that space. That new barrier? Law. In this new context, just because one *can* send information instantaneously across the globe does not mean the intended recipient will be *allowed* to access or to use that information.

These legal impediments force us to reconsider the idea of the flat earth as not a uniformly smooth landscape. Rather, it is a surface covered by *friction points*—areas in which something can slow, or even stop, the flow of ideas and information. Thus, exchanging information over the flat earth is akin to sliding a disk across the surface of a frozen pond. One needs to know where the friction points are in order to avoid them and get the object from point A to point B as quickly and easily as possible. This situation is particularly the case in technical communication. As the field is based on the exchange of infor-mation, these friction points will markedly affect how technical communicators

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participate in the modern global economy. And in the end, it all comes down to one central issue: content.

To begin, the friction points that impede the global flow of online information are not random. Rather, they often reflect deep-seated cultural attitudes concerning appropriate behavior. National laws, in turn, represent the codification of a particular culture's or group's attitude concerning what is and what is not acceptable content to create, access, or exchange. In the age of globalization, these legal differences can create barriers as real and as effective as any fence or wall. In the United States, for example, national law allows citizens to access and exchange a wide range of content, including critiques of the government or of public figures. In other nations, however, laws might greatly restrict or prohibit the creation of or access to such content. As a result, variations in national laws can affect how easily and effectively certain content can move from point to point across the flat earth. This factor has profound implications for technical communicators working in global contexts.

Increasingly, many of the international legal differences that generate friction involve the creation and the management of content. Copyright law, for example, is one of the greatest friction points affecting the free and open flow of ideas and information across the flat earth, for it stipulates who has the right to replicate or to share certain kinds of content. Similarly, perspectives on privacy rights— and who can legally access and copy an individual's personal information (i.e., content)—can differ from nation-state to nation-state. As a result, when individuals try to share different kinds of content/information across borders, legal systems can intervene to create friction that slows or stops that exchange.

Different national laws can also determine the language in which content can be provided or exchanged in different geopolitical regions. The European Union (EU), for example, requires that much of the content distributed across its member nations be translated into the languages of those member states (Language requirements, 2012; Walmer, 1999). Such legislation, moreover, can affect the creation and distribution of content within nations themselves. To distribute information/content in the Canadian province of Quebec, for example, organization are often legally required to provide that content in the province's official language of French (Medical device regulations, 1998). More recently, demographic shifts have created new legal contexts affecting the language in which technical information (content) must be provided to individuals within a specific nation, as is currently the case of providing medical-related information within the United States (St. Germaine, 2010). All of these factors have important implications for technical communicators whose primary job is to create and manage content. For these reasons, today's technical communicators need to understand these legal friction points if they wish to work effectively in global contexts.

To address these global friction points, technical communicators must combine their knowledge of content creation and content management with an

understanding of the international legal issues affecting those practices. The objective of this collection is to provide an overview of the different legal aspects that can be friction points one might encounter when working with content in international environments. Through examining these topics, this collection provides readers with an initial and a relatively broad-based review of legal issues affecting technical communication practices in global contexts.

The entries in the book's first section, "Challenges and Considerations," provide an overview of the new and unique situations created by extending legal concepts and practices into global contexts. In this section's first entry, Wendy L. Kraglund-Gauthier and David C. Young examine how technical communicators should rethink the notion of privacy—both what it is and how it is protected—when interacting in international situations. To do so, the authors use a case study that examines the often misunderstood issue of privacy laws in online education. Through this case study, Kraglund-Gauthier and Young discuss how individuals and institutions might rethink the idea of protecting the rights of online users. They also make recommendations for how such issues could be addressed within international online interactions.

In the section's second entry, Brett Lunceford reviews the debate surrounding network neutrality, a situation in which technical details have been largely overlooked in favor of slogans and arguments that appeal to heuristics. Lunceford notes that, despite the complexity of the issues surrounding Internet traffic in international contexts, proponents of network neutrality have centered the debate on the master term of *neutrality*. He also examines how the rhetoric surrounding net neutrality can provide technical communicators with insights into how technology issues are rhetorically constructed in the public sphere. In so doing, he notes how such constructions affect international law and public policy and overviews the difficulty of governing a global network that transcends national borders and jurisdictions.

The section's third entry, "The Rules of the Game: Real Legal and Economic Implications of *Second Life*," takes the reader even deeper into the intersection of online media and global interactions by examining the online virtual world of *Second Life.* As the author Marco Antonio Chávez-Aguayo explains, these contemporary computer technologies now connect artists and producers with audiences around the world. However, such environments also pose new challenges for technical communicators who must grapple with legal issues such as copyright, privacy, and the distribution of private information when using *Second Life* to participate in internationally distributed teams.

Ronald L. Stone's chapter, the final entry in this section, moves the discussion of representation in global contexts further toward the abstract as he examines how numeric representation has legal implications in international interactions. Specifically, Stone examines the legal difficulties created by using different systems of measurement in global contexts. He also examines how metrication—the use of the metric system—creates legal communication

challenges in international settings. In his analysis of these issues, Stone examines common problems technical communicators might experience in such situation and overviews prospective solutions to such problems.

Entries in the book's second section, "Language and Access," examine the legal challenges technical communicators face when trying to create information that can be used effectively in global settings. This section begins with Tatiana Batova's discussion of the idea of legal literacy and its connections to both technical communication and technical translation processes in global contexts. Specifically, Batova looks at how multilingual technical communication projects require a new emphasis on civic engagement in technical communication in order to better understand the legal contexts in which technical translation occurs. In so doing, she provides a framework for understanding the complex area in which law, technical communication, and technical translation intersect.

In the section's second entry, Nicole St. Germaine continues this examination of legal issues and language by reviewing how technical communicators are affected by Executive Order 13166. St. Germaine does so by presenting both the results of her research on the literature associated with this Executive Order and her interviews with technical writers and health communicators who are currently writing technical documentation for different cultural audiences. She then concludes her chapter by presenting recommendations—or best practices— for how technical communicators might address specific issues relating to translation and information sharing in cross-cultural contexts.

Usability, from a global perspective, often involves more than just language. It also involves access to information. Such access, however, is often regulated by a patchwork of different national laws that affect who can access certain kinds of information when and where. Liza Potts examines this notion of access in global contexts by reviewing the concept of digital rights management and associated practices in global contexts. As Potts explains, while individuals around the world can use online media to access digital entertainment through various sources, locating, watching, and interacting with this content is riddled with usability issues that can create a deterrent to legal use. In her chapter, Potts traces these issues in order to reveal the different usability concerns involved in these situations. She then concludes by calling for improvements of the user experience and of industry policies regarding digital rights management and the Digital Millennium Copyright Act.

Online media evolve continually and rapidly, but legal change is often slow and sporadic. As a result, the online environment seems to continually be one, if not one hundred, steps ahead of the legislation that tries to regulate it. The book's third and final section, "Ownership and Authorship," explores some of the emerging issues that can contribute to confusion with regard to law in global contexts. As Pavel Zemliansky and Traci A. Zimmerman explain in the section's first entry, recent developments in technical communication theory and practice have yet to address the importance of understanding intellectual

property and authorship. In order to better comprehend the implications of this gap, Zemliansky and Zimmerman review major developments in copyright and intellectual property affecting the education of today's technical communicators. They also examine how that education manifests itself in professional training and professional practice as well as provide suggestions for engaging effectively in such practices.

Annette Vee continues this discussion of intellectual property in global contexts by analyzing the effects of patent law in writing studies. In so doing, she reviews how the monopoly rights granted through patents can affect composition in, of, and with software. She also outlines some specific reasons patent law pertains to writing specialists, and explores the blurring boundaries between written text and computer code. Vee then concludes with an examination of controversies surrounding patent protection for software in international contexts.

The section's final entry combines ideas of copyright and access to examine the relatively overlooked area of orphan works. In this chapter, Martin S. Copenhaver overviews the legal concept of orphan works, or copyrighted works for which the copyright holder cannot be identified. Through this overview, Copenhaver discusses the implications such works have for accessing and using information in an age of the global Internet. He also reveals why such works should be seen as important to international technical communication practices and uses theoretical and practical considerations to explain the global legal and policy significance of orphan works. Copenhaver then concludes by providing technical communicators with suggestions for how they can participate in the ongoing global dialogue on this important legal issue.

Through examining these topics, the various chapters in this collection provide readers with an initial and a relatively broad-based review of legal issues affecting technical communication practices in global contexts. The editors hope readers will use the ideas and information presented here as a foundation for creating best practices and engaging in future research in the area of legal issues in international settings. By working together to examine such issues, technical communicators can create methods for addressing friction points and improving the flow of content across the newer, flatter earth.

REFERENCES

Language requirements in Europe. (2012). *Net-translators*. Retrieved from http://www. net-translators.com/knowledge-center/articles/language-requirements-in-europe

Medical devices regulations, SOR/98-282. (1998). *CanLII*. Retrieved from http://www. canlii.org/en/ca/laws/regu/sor-98-282/latest/sor-98-282.html

St. Germaine, N. (2010). Technical communication in the health fields: Executive Order 13166 and its impact on translation and localization. *Technical Communication, 57,* 251–265.

Walmer, D. (1999). One company's efforts to improve translation and localization. *Technical Communication, 46,* 230–237.

PART I

Challenges and Considerations

CHAPTER 1

Hiding Behind a Password: Are Online Classes as Private as We Think?

Wendy L. Kraglund-Gauthier
and David C. Young

Since the proliferation of the Internet as a medium of information, we have witnessed a veritable explosion in online opportunities for learning. To address student demand for accessible course offerings, institutions of higher education have expanded their methods of course delivery from the traditional brick-and-mortar classroom to now include "bricks and clicks" and just "clicks." As Grant-Davie and Cargile Cook (2005) have noted, technical communication program administrators and designers have been incorporating digital media into content design as quickly as technology has been evolving. However, this trend toward ever-increasing availability of online instruction does pose problems for all stakeholders.

We contend that domestic privacy laws such as Canada's *Personal Information Protection and Electronic Documents Act* (PIPEDA), as well as parallel legislation that exists in the broader international community, lacks specificity and stringency. In fact, there is a lack of clarity in terms of protection surrounding the collection and storage of course-based materials, including online discussion board content and class recordings. With the legitimate concern of many individuals that their personal privacy be safeguarded, have we established a false sense of security among online users when we offer password-protected sign-ins? Furthermore, because of the cross-border nature of online learning, there is a certain amount of ambiguity regarding the application of regulations and laws.

Failure to acknowledge this new reality created by online education in its various forms can pose potential ramifications for how we communicate in a

global and technical world. In this chapter, we explore the underresearched, underacknowledged, and often misunderstood issue of privacy in terms of electronic learning as a medium of education. We discuss how individuals and institutions of higher education should be more attuned and committed to protecting the legal rights of online users. We also offer recommendations and alternatives for consideration. Although privacy is expected, it should not be assumed.

DEFINING ONLINE EDUCATION

> Learning is a continuous, cultural process—not simply a series of events. It values and transcends the classroom and the workplace. Access and opportunities to learn should be available to anyone, anywhere, and at any time.
> —Rosenberg, 2001, p. xvii

The Canadian Council on Learning (2009) has defined electronic learning (or e-learning) as the development of knowledge and skills through the use of information and communication technologies; in particular, e-learning is "the application of computer technologies to education" (p. 4). Other terms include web-based learning, digital learning, and virtual learning. Simply put, e-learning refers to learning that is facilitated by the Internet and by computer technology; collectively, this technology is referred to as information and communications technology (ICT).

Synchronous and Asynchronous Learning

Online learning options are characterized as being either synchronous or asynchronous. Synchronous online learning most closely resembles traditional face-to-face learning in which physical and temporal space merge. Technological advances have led to myriad collaborative tools and learning environments; hardware and software are now relatively inexpensive and user-friendly. Microphones are used to transmit voice in real time, and live visual images are shared via video capture devices, or webcams. Proprietary online platforms that afford synchronous possibilities include Elluminate Live, Wimba, and Second Life.

These platforms share similar characteristics: a roster on which the names of the students in attendance are displayed, a chat feature in which participants can send immediate messages privately to other participants or publically to the entire room, and access to session recordings. As in the traditional face-to-face class setting, students gather at a prearranged time at a prearranged location for the specific purpose of learning course materials. Yet in the case of a virtual classroom, that prearranged location is at each participant's private computer workstation or whichever Internet location they so choose.

In comparison, asynchronous learning is not constrained by time. Using programs such as Blackboard, WebCT, Moodle, Desire2Learn, or institutionally developed platforms, just to name a few, enrolled students log into their classrooms and complete assignments, read and respond to peers' postings on discussion boards, and download learning materials. All this can be done at the students' own time, regardless of time zone. Many asynchronous classroom options also allow for online testing, assignment uploads direct to the course facilitator, and repositories of class materials and external links.

Despite a lack of immediacy afforded by asynchronous platforms, students and professors in asynchronous classrooms report feeling connected with each other via their internal postings. As well, in our experience, students and professors have also noted the idea that the asynchronous nature of the classroom has actually led to students making more in-depth reflections and displaying critical thinking through their postings. They have reported that the asynchronous nature of the course has meant they have had time to reflect on their readings, read their colleagues' postings on the same topic, and then carefully formulate their own response.

Whether working in synchronous or asynchronous learning environments, when developing a graduate level course to be delivered via online modalities, content creators should have an awareness of domestic and international privacy laws. Often, course content is delivered and stored in electronic form. These recordings contain text, audio, and visual components of class sessions. As instructional designers and professors, we have both witnessed instances wherein students have shared information in an online setting. In an alternative context, this activity could be construed as divulging information that may be considered a violation of privacy laws. Although established guidelines exist concerning confidentiality, in fact, students in dynamic debate with colleagues during online class sessions may reveal factors that would specifically identify people and places. For example, casually referencing a particular student, teacher, school, or school board may occur as an innocent comment made during conversation. In face-to-face exchange, words can be ethereal; in an online context, that moment in time is captured and stored—often in perpetuity.

THE PROLIFERATION OF ONLINE LEARNING

> Learning is key to productivity, competitiveness and prosperity. E-learning blends the technology that pervades our work with the constant skills-upgrading needed to work with technology.
> —Bloom & Murray, 2001, p. 38

The pervasiveness and power of the Internet is often difficult to conceptualize, yet when placed in the context of radio and television, its potential reach is

astounding. In little more than three years, the Internet gained an audience of over 50 million users; it took television 15 years and radio 37 years to achieve the same audience-base (Naughton, as cited in Curran, 2008). Over the past 10 years alone, technological advances have significantly shaped the way individuals communicate, build relationships, shop, and learn; the veritable explosion of ICT has vastly changed the educational virtual landscape.

Why Online Learning?

John Chambers, Chief Executive Officer for Cisco Systems, a leading provider of network software and hardware, has purported that "the biggest growth in the Internet, and the area that will prove to be one of the biggest agents of change, will be in e-learning" (as cited in Rosenberg, 2001, p. xiv). For varied reasons, including providing accessible programming, addressing student demand, and responding to competitive and economic pressures (Abrami et al., 2006; Canadian Council on Learning, 2009; Naidu, 2006), more and more students are self-selecting online modalities to initiate or further their learning.

Rosenberg (2001) has highlighted 11 key benefits to e-learning that encompass the needs of both students and organizations. These benefits are

1. Lower costs for learning
2. Enhanced business responsiveness
3. Consistent or customized messages, depending on the situation
4. Content is more timely and dependable
5. Learning is 24/7
6. Little user "ramp-up" time
7. Employs a universal platform
8. Builds community
9. Scalability
10. Leverages the corporate investment in the Web
11. Provides an increasingly valuable customer service (pp. 29–31).

The assortment of online course options means students have increased opportunities to select courses that meet individual needs, requirements, and interest and skill levels. Students' options of programs that feature continuous enrollment options, self-paced modules, and flexible scheduling translate into more opportunities. Students are able to schedule classwork around personal and professional responsibilities, and with access to a computer and the Internet, they can study anytime and anywhere. Varying online course delivery methods that incorporate individual and group work, text-based, audio, visual, and other multimedia formats also address differing learning styles. As further incentive, some institutions promote minimal program admission requirements and the transfer of

existing course credits from other institutions in an effort to capture the lucrative online market.

Online Learning as a Training Medium

Technical communication skills have become increasingly important in today's economy. The emergence of transglobal enterprise and multinational corporate offices connected via digital means has created a need for the workforce to be well versed in technical communications. Employees can often learn new content or upgrade existing skills via online modalities. St.Amant (2007) has noted the increased international interest in technical communications—specifically how "some employers believe that the experience of interacting within multinational groups in online classes adds value by teaching students how to communicate within a global context that mirrors modern business practices" (p. 16).

Online learning technologies are often touted as a panacea for addressing learning needs in challenging economic climates. The potential cost savings in travel, accommodations, replacement workers, and other expenses associated with training can be significant once the initial costs associated with necessary ICT infrastructure have been addressed. Instead, some companies have recognized the greater return on investment in training that is specifically tailored to individual learner's needs (O'Leonard, 2009). Ultimately, online learning programs are a convenient and oftentimes cost-effective way to ensure individuals receive the appropriate and timely training they require.

Growth Trends in Online Learning Opportunities

St.Amant (2007) has linked the growth of international online education with technical deregulation and global interest in learning opportunities. Educational institutions and businesses are becoming increasingly more acceptant of the validity and flexibility of online learning. The Sloan Consortium (Sloan-C) is an American-based, nonprofit organization that focuses on research and application of "online education into the mainstream of higher education, [thus] helping institutions and individuals improve the quality, scale, and breadth of online education" (Sloan-C, 2008, Introduction section). Sloan-C surveyed American universities to gauge online course adoption and reported that by 2002, over 80% of surveyed universities offered at least one online course. By 2006, over 3.5 million students had enrolled in a course offered via online modalities (as cited in Dell, Hobbs, & Miller, 2008). Between the fall of 2004 and the fall of 2005, the enrollment of online students increased 35%, or 850,000 additional students, and there are no indications that an e-learning enrollment plateau has been reached (Ruth, Sammons, & Poulin, 2007). The results of a survey done by the Instructional Technology Council (2008), a consortium of American Community and Junior Colleges based in Washington, DC, indicate that distance

learning enrollments increased by 11.3% at a time when enrollment in campuses overall increased by less than 2%, with evidence that the demand for distance learning greatly exceeded the available course offerings. Moreover, the Council's report notes that

> Many colleges had significantly increased their number of blended or hybrid and/or Web-enhanced or Web-assisted courses. Most colleges have rapidly expanded their student services and technology support services to meet accreditation expectations of "equivalency" with traditional face-to-face courses.

In 2007, Statistics Canada (2009) conducted a survey of Internet use across Canada. From a sample size of 26,588 (a 75.9% response rate), they declared that the number of people who reported using the Internet for education, training, or schoolwork increased from 26.1% in 2005 to 34.0% in 2007 (+7.9%). This percentage increase was surpassed only by the number of respondents who reported obtaining and saving music (+8.2%) and using an instant message program (+11.2%). In another study conducted in 2005, just over one-quarter (26%) of adult Canadians—an estimated 6.4 million—reported they went online for distance education, self-directed learning, or correspondence courses (McKeown & Underhill, 2005). While residents from rural and small town areas were less likely than their urban counterparts to report going online to research assignments, they were more likely to report going online for educational purposes.

Similar statistics have emerged from Europe. As Curran (2008) has reported, the prevalence of ICT has continued to grow steadily since the arrival of the new millennium. The European Centre for the Development of Vocational Training (ECDVT, 2001) reported that by 2000, e-learning initiatives were embedded into European Union (EU) policy objectives for economic growth and employment strategies.

Specifically, in 2001, online learning accounted for 14% of training expenditures. Curran (2008) also reported on a 2005 study of adults in ten EU member states, in which "12% of the adult population [surveyed] makes use of the Internet as purposeful organized learning" (p. 30). However, online course enrollment in the EU is not as popular; a mere 8% of students enrolled in full-time courses report taking an e-learning course.

In developing countries, distance education can serve as a viable alternative to the steep capital expenditures of brick-and-mortar classrooms. On revenue-starved campuses, establishing strategic business alliances and partnerships with external academic institutions that offer online site hosting and course delivery is one cost-effective solution to increasing enrollments. Weigel (2002) has

argued that large-scale introductory courses such as English literature or biology, which tend to have similar content from university to university, are prime targets for the corporatization of online learning. The Internet itself has served to ease the transfer of credits between institutions. Course materials are often posted online and verifiable with a click of a mouse. Examinations can be sent to proctors via email, and students can be tested via online test banks.

Geographical space is shrinking under the practically limitless reach of the Internet; a virtual classroom can easily be filled with students from all over the globe. As Abrami et al. (2006) argue, an online learning presence requires universities to have policies and strategies to meet the emerging student and faculty demand. However, some authors have suggested that Canada lags behind other countries in their research in and adoption of e-learning policy and strategy (see Abrami et al., 2006; Canadian Council on Learning, 2009; Charpentier, Lafrance, & Paquette, 2006). In their "Vision Statement on On-Line Learning in Postsecondary Education," the Council of Ministers of Education, Canada (CMEC, 2001) urge governments and postsecondary institutions to hasten and coordinate their efforts to increase online course offerings. They note the power of online learning to narrow the digital distance between Canadians and recommend processes that promote "quality assurance, transferability, and high technical standards" (p. 85).

Online education is purported to help reduce potential barriers to accessing education, such as cost and distance. While more definitive research on this matter is required, this does suggest that the Internet and its infrastructure can be harnessed as a tool to help overcome the barrier of distance in education (McKeown & Underhill, 2005). In summary, there has been a substantial increase in the offering of online courses at both American postsecondary and public schools in the past five years. It is not unreasonable to suggest that similar trends are reflected in Canadian educational circles. As online learning gains momentum globally, its increase in popularity aligns with technological advances in hardware and software. The technology that is used has improved dramatically, resulting in an increased demand by students for this form of program. It is incumbent upon institutions to clarify their intentions around online learning and to ensure that learning platforms and their support systems for students and faculty be of the highest quality.

ONLINE EDUCATION AND THE LAW

Information technology has the capacity, if not to end privacy, then to redefine what we mean by the term.

—Boyle, 1996, pp. 3–4

Privacy Law: Setting the Stage

Writing in 1890 in the *Harvard Law Review*, Warren and Brandeis noted in their famous piece "The Right to Privacy" the legal and constitutional "right to be let alone" (p. 193). In the more than 120 years that have elapsed since then, privacy has become an ever-increasing ethical and legal issue. Arguably, the concern over privacy has been exacerbated by the seemingly unending proliferation of technology. Although most modern democracies have enacted legislation that purports to protect personal privacy, there are countless examples of violations of this privacy. In fact, oftentimes it is the very agencies entrusted with maintaining privacy that breach these established safeguards. For instance, the endless tales of wiretapping and surveillance carried out by the Federal Bureau of Investigation during the directorship of J. Edgar Hoover serve as a stark reminder that privacy is not unassailable. Additionally, reports of increased government encroachment into the realm of personal privacy in the aftermath of the September 11, 2001 terrorist attacks have become seemingly commonplace. Thus, it would seem that although personal privacy is often viewed as sacrosanct, it can and at times is subject to certain limitations or restrictions.

What is Privacy?

An issue that remains somewhat perplexing for many writers and commentators is what the concept of privacy actually entails. Clearly, as Fried wrote in 1968, "The rights of privacy are among those basic entitlements which men must respect in each other" (p. 484). Although Fried's words facilitate the establishment of privacy as some type of terra firma upon which social relations should be constituted, it does little to shed light on defining privacy. In fact, the term is a contested one, and uniformity of thought surrounding its meaning is difficult to establish or pinpoint. As McCullagh (2008) noted, "A single definition that adequately incorporates all the subtle differences that privacy evokes has so far proven impossible" (p. 4). As vexing as this might be, it is wholly inadequate to proceed without offering some statement of meaning for the word privacy, even if this statement is imperfect and incomplete. In this regard, revisiting Fried's work is an appropriate starting point.

For Fried (1968), although there is an inextricable link between privacy and secrecy—the latter, which he characterized as the capacity to restrict knowledge about oneself to others—privacy should not be confused with secrecy. As he pointed out,

> It is not true, for instance, that the less that is known about us the more privacy we have. Privacy is not simply an absence of information about us in the minds of others; rather it is the control we have over information about ourselves. (p. 483)