

Behind the platforms: Safeguarding intellectual property rights and academic freedom in Higher Education

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Executive Summary

Higher education (HE) faces a complex landscape of digital technology services, shaping educators' labour and working conditions in new ways. Two particular issues are ownership of intellectual property (IP) and academic freedom when using digital education services such as edtech platforms. Edtech platforms complicate questions of academic ownership of content and teaching materials, and can impact educators' academic freedom in teaching.

Educators' IP rights are affected by copyright arrangements that vary considerably in different international contexts. Many academics retain IP when posting content on a digital education service, but in other contexts, copyright for digital content may be claimed by their employer institutions. In some contexts, edtech platforms seek IP rights over academic content for delivering their

service (for example, plagiarism detection or sharing student notes). They can also claim control of some user data produced through the service, which they may use for product development purposes. The licenses and contractual arrangements between institutions and vendors are essential in governing IP ownership and shaping academics' freedom to teach.

Digital education platforms may treat user content and data as valuable assets for potential profit-making. Uploaded content and data records of activity on a service can be used to support further product development, which may then be offered to institutions or individuals for a higher subscription or similar fee. An economic logic that treats educational materials and data as digital assets with potential financial value is in tension with core values of academic ownership and freedom, and open access to educational resources.



The headline finding of this study is that the increasing digitalisation and 'platformisation' of HE is resulting in a complex, messy combination of technical, legal and financial factors relating to academic IP and academic freedom, which are often complicated further by different governance and copyright regimes across national borders and individual institutions.

As a result, responses to issues of academic IP and academic freedom in digital education are fragmented, with no sector-wide standards or rules, and minimal guidance for institutions on these matters when engaging in licensing or procurement of digital education services, or staff when engaging in sector discussions/negotiations. The introduction of edtech platforms into universities shapes new kinds of practices, which may become normalised, though often without democratic discussion or scrutiny within the sector. This raises the risk that academic IP may be exploited, and academic freedom constrained by HE institutions, edtech companies, or both, as digital platforms occupy an increasing role in HE systems. The report details three key sets of issues and challenges.

Academic content

Edtech platform operators do not typically claim ownership of academic content posted to an online service. However, IP ownership arrangements differ internationally, with academics retaining their IP in some contexts; in others, HE institutions claim ownership over materials for purposes such as IP exploitation and revenue sharing. Platform services can also enable individuals to share academics' IP without their permission, leading to enforcing takedown notices for content that violates their terms. While academics or institutions usually retain IP ownership and licence over content, platform companies sometimes take

license over content to help deliver or improve particular services. Moreover, it can be difficult for academics or employers to withdraw their content or material after it has been posted on the platform. These developments raise three key challenges:

- A digital operator or an HE institution may change its practices concerning IP over content, requiring academics' vigilance and collective action to protect ownership rights.
- HE institutions that own copyright over academic content posted on a digital service can treat it as an asset from which they can generate value, potentially licensing educators' IP to other institutions for a fee without compensation to the original creator.
- Complex copyright issues are placing new demands on academic educators and HE administrators to protect individual and institutional IP, including addressing new legal problems such as copyright infringement.

User data

Digital platforms collect substantial quantities of user data from universities. HE institutions typically decide which data a platform vendor can collect and for what purposes it can be processed, usually governed by contracts between vendors and institutions, institutional privacy policies, data protection impact assessments, and legitimate interest tests. These legal arrangements make it difficult for staff or students to ascertain how their data is collected or processed. Beyond personal data, platform operators may control and ownership over user data. User activity can be used for product improvements and development. Companies may retain such data indefinitely. As such, edtech platforms amass data as assets for commercial benefit from the labour and activities of

university academics and students. This raises three key challenges:

- Edtech platform operators can retain user data for unknown future purposes, practices and strategies, as the data are treated as high-value assets with potential profit-making prospects.
- Digital data can be put to unknown future uses and unspecified purposes, including product and feature development, with the user data in particular retained by the platform proprietor as a valuable IP asset for ongoing analysis and potential feature or product development.
- User activity data can be used for purposes such as the surveillance of academic labour by institutions or other monitoring purposes by accrediting bodies and policy officials for the evaluation of outcomes.

Academic freedom

Issues of ownership and control of both content IP and data affect academic freedom in teaching by shaping academic decision-making related to content, pedagogy, evaluation and assessment. Academics often have limited choice over the digital services their institutions procure and constrained options to opt-out. In other cases, due to demanding workloads, academics are willing to outsource their labour to providers of online textbooks, courseware and assessment technologies, with edtech vendors offering highly standardised packages and/or licensed packages of partner courses and content. Artificial intelligence applications have begun to appear that enable course structure, quizzes, and assessments to be produced automatically, while edtech companies market analytics functionality as being able to prompt students and intervene in their studies, potentially challenging academic

control over content and assessment. Edtech platforms, therefore, introduce new challenges for academic freedom in teaching, potentially even constraining or impeding certain pedagogic actions or decisions. These developments raise four key challenges:

- Outsourced content and automated services challenge educators' professional pedagogic autonomy to decide what and how they teach.
- Edtech platform providers can constrain institutional autonomy, challenging the right of universities to determine institutional matters such as the structure, content and form of teaching.
- Academic freedom can be restricted by HE institutions being locked into complex arrangements of platforms and infrastructures that are impossible to exit without extremely high switching costs.
- Academics are often locked out of critical conversations about procurement of services, despite the potential of those services to affect their academic freedom and labour, while new technical, legal and contractual experts responsible for digital strategy may not recognise the impact of platforms and infrastructures on academic work and freedom.

Recommendations

Our recommendations to address these issues are:

- Further research should be conducted into specific national and regional issues related to digital technologies, IP and academic freedom in HE, with the aim of identifying specific contextual problems and potential good practice models that could be emulated in other contexts. Such research should focus on the key challenges identified in this report:
 - academic IP rights over content on platforms
 - the specific purposes for which edtech platforms collect user data
 - the implications of platforms for academic freedom in teaching
- Sector bodies, such as national research and education networks and regulatory organizations, should consult on creating standard quality assurance processes for procuring edtech platforms. Such consultations should involve experts with relevant expertise:
 - ethical procurement practice
 - quality assurance
 - vendor management strategy
- Universities should be more transparent in the agreement of contracts with digital education service providers, routinely publishing summaries of platform agreements in an accessible way for staff and students. This would include institutional transparency in terms of:
 - specific IP rights of staff
 - the IP claimed by institutions using the services
 - how user data are collected and processed, and which actors (institutions and vendors) will use the data for what purposes
- Unions should convene an ongoing sectoral debate on the impact of technology services, such as the effects of platforms and infrastructures on academic IP and academic freedom. This could be a route to developing advocacy campaigns related to academic labour in platformised HE.



The full research paper, in English, can be found here:
<https://eiie.io/2024BehindPlatforms>



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