

Tuesday, March 11, 2014

Click-Through Agreement Task Force, ETLG

Tuesday, March 11, 1pm - 2pm

Dial in Number: 866-740-1260 Code: 6439923#

In Attendance: Jenn Stringer (UCB), David Levin (UCD), George Michaels (UCSB), Dan Suchy (UCSD), Jim Phillips (UCSC), David Hutchins (UCSD), MaryEllen Kreher (UCOP), Mike Wood (UCOP)

George acting as Scribe

Wrapped meeting at 1:55 PM.

Agenda

1. Review of the recommendations of the report (We will not have time to discuss all of these in our 50 minutes today. Shall we start at the beginning and see if we can get through Indemnification & Risk and Impact?)
 2. Next steps and action items. (At 1:40 we should wrap up discussion and move to next steps and assignments.)
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Introductions and Preliminaries

Discussion about agenda, need to link in additional documents that MaryEllen had sent out earlier. Discussion about some other resources that have already been posted to the wiki.

Charge "construct a response to the ILTC workgroup report to present to ETLG: Vendor "Click Through" Agreements: Workgroup Report for ITLC August 9, 2013. Proposal for how to accomplish this task - review and respond to the specific recommendations of the report

Need to walk through the key findings of the report, listed on page 2 of 10, which are the main ones, but then need to double check against other recommendations in the body of the report. On a point by point basis, shall we evaluate these recommendations, and then comment on where ETLG may support, and any additional comments that we have regarding the recommendations?

Review

Indemnification

In theory, no one should be signing off on these agreements with a third party because they do not have standing to agree to the terms. Need a mechanism whereby someone is authorized to enter into to approve these agreements. Who would have standing and under what circumstances. Are there some services that we would encourage use, and other where we would not? Idea that there may be three cases: Confident in use, not confident and do not recommend use, and a middl group where we do not know and the service requires additional analysis as to risk. This in the way of guidance to faculty and staff acting on behalf of faculty in the teaching endeavor. Have to be careful that this does not apply to students, but does apply to students acting a teaching or research capacity. Anyone who might be subscribing to a service on behalf of the University, this would apply to. David's Buckets: Reviewed application and there is no risk, need to check, and those that do pose a risk and are not recommended.

Risks and Impact

UCI's web site and UCSC explanations are good examples. Portions of MaryEllen's talking points would also fit into this section very well. Many of the cases where faculty might use these services probably do not include a great deal if any sensitive information (e.g. FERPA data). There is the risk that personal information included may be used by third parties for advertising or data logging for other purposes. As Jim points out some of these agreements have the signer agree to arbitration rather than legal action. Also issue with terms that include the right to change the terms at anytime. In the case of TurnItIn, how do we really know that the data will not be turned over to government agencies. Example UCSD has 10 years of data in TurnItIn, a huge wealth of information. Adding some elements about making people aware of the risks of sharing data.

Favorability

ITLC is primarily on the hook in next steps for this element, and may ask for the most help with this. Are there examples of where we have done this well, or cautionary tales able how we may not have done this as well as possible as a guide to future actions?

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MaryEllen still struggling with which procurement groups in the system and/or on campuses, cover which kinds of products and agreements. Example TAS covering issues with software and cloud services, but not clear who manages those contracts. TAS is a sub committee of ITLC, they cover multi-campus negotiations for software. The problem with the TurnItIn license was that there was no one at the OP level who could take over the negotiations. UCOP has it's own procurement department, which operates like the individual campus procurement departments. For a systemwide agreement, who can sign on behalf of the Regents? The Libraries systemwide do have a mechanism in place for signing systemwide agreements. The TurnItIn deal fell through because there was no mechanism to commit campuses to pay the agreed fee. The deal with Google was different because there was no money involved, and the agreement was signed by University Counsel for the system to agree to the licensing arrangements. Both of these were very different to click-through agreements. With these kinds of large agreements we have mechanisms in place to handle them. These click-through agreements are on such a smaller scale, and largely individual, and so the full panoply of legal advice does not get a chance to weigh in. Each campus is different. At Berkeley had to go to both campus Counsel as well as Contracts and Grants to get full scope of the agreement understood. The campuses could use more guidance from OP on what terms and kinds of agreements campuses may agree to, even if they are not in agreement with systemwide policy. Much of the previous discussion kind of pertains more to acceptance of terms.

Should endorse this set of recommendations. Should we list all of the public sector negotiated agreements that we would recommend be included? Should follow up with Jeff, and find out the name of the group that is working on the NET+ agreement, as well as find out what other agreements they may be working on or thinking about. If ETLG feeds suggestions to the committee to send on to ITLC, that may be most effective and efficient way to go, an an ongoing process. We could use some examples of the kinds of things covered within "favorability". Perhaps the mechanism could be broadened to include other factors facing adoption, like accessibility issues as well as risk issues. For example Google Docs has accessibility issues.

Acceptance of Terms

Did not formally get to this item, but a fair amount of the discussion in the section on "Favorability" probably fits into the this topic, or at least touches on it.

Next Steps

Recap

Made our way through the first three items in the summary. Need another call. What can we do in the interim before the next call? Might want to review the particular suggestions made on the call today and either embellish them or expand on them for clarity. Edit for clarity. For example making a list of applications that we think already fall into one of the three buckets. Also tackle some information for faculty to help them assess risk and be able to proceed with better understanding. Perhaps something like the fair use checklists that were helpful.

To Do

1. Determine what systemwide group is working on NET+ agreements and perhaps other agreements. Followup with Jeff Henry to get this.
2. We would look through the click-through document, and perhaps develop some use cases as examples. This specifically for instructional applications. Perhaps as many as three, one benign, one clearly problematic, and one that looks benign initially, but on deeper understanding reveals that there is more risk. Be able to provide faculty and staff with clear examples of what some of the issues and risks can be.
3. David to send the materials from MaryEllen to George for posting to the wiki.
4. George to post notes on the site.
5. Very important to develop the list of services we recommend against using for courses.
6. Consider developing a checklist for faculty and support staff. Jim's point that faculty need very clear information on what the risks to the faculty, their department or their campuses might be. MaryEllen's cautionary tale about the UCOE courses that faculty were allowing people not directly involved in the course into the site. Needed to work with University Counsel to develop an agreement for these non-course affiliated people to sign off on as a condition of participating in the courses. Also resulted in a decrease in the number of requests for non-affiliated people to access the sites. Can also be a problem for grad students added to a site as a TA before they actually have a TA appointment.
7. Schedule a second conference call to review and discuss the remaining recommendations.