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ICT in legal education: a challenge but an opportunity

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The digital age has seen exponential growth in the power of information and communications technology (ICT) and has transformed our lives. Education is no different. To the extent that higher education continues to adhere to traditional methods of teaching and learning, it is becoming increasingly out of step with these modern developments. This paper examines the author's 17 years experience of using ICT to enhance learning in law and suggests that while ICT poses a challenge for tertiary educators, it also offers many opportunities.

Keywords: ICT in education – millennial students – effective learning environments

Introduction

We live in a time of exponential change. In 1965 Gordon E Moore, one of the founders of Intel Corp and regarded as a prominent figure in the development of computers, observed that the number of devices on a computer chip – and consequently the power of a computer – was doubling every year. This has since been dubbed “Moore’s Law” and has become a well-known mantra in the computer industry. It has enormous implications for society, not least of all education. Indeed, we have reached the point where magazines like *The Education Technology Guide* publish reports with titles like “Why Nano-Technology Must Become a Part of The Curriculum” (Bernhardt, 2006). If such a view were to become conventional wisdom, what challenges does that then pose for higher education? Today’s university students who are school leavers and who are growing up with an intuitive ability to cope with change and new technologies – “Millennial students” or “net.gen” as they have been called (Nelson, Kift & Harper 2005) – represent a new challenge not previously encountered by higher education. The lives of this generation “are characterized by ubiquitous information, merged technologies, blurred social-study-work boundaries, multitasking and hyperlinked online interactions” (Nelson, Kift & Harper 2005). They are what Prensky (2001) described as “digital natives” and have different expectations and greater demands in terms of engagement. The irresistible conclusion is that higher education must also embrace change and seize the opportunities that advances in information and communications technology (ICT) present.

Legal education presents a good example of an area of tertiary learning which finds itself at the engagement crossroads. The author has developed ICT projects since 1990. The results of empirical surveys of the various projects he has developed bear testament to the fact that ICT offers great opportunities to engage students and enhance their learning of law. At the same time, these projects have provided evidence of a number of issues that ought to be considered when introducing ICT into legal education. The lessons learnt from these 17 years of experience indicate that using ICT in education can be cost effective and have sustained reuse and reapplication, whilst presenting students with authentic learning experiences. These lessons, whilst learnt in the context of legal education, are transferable to other disciplines.

Traditional methods of teaching and learning: are they up to it?

Traditional legal education has been described in the following terms:

“Traditionally law is taught through a series of lectures, with little or no student involvement, and a tutorial programme. Sometimes tutorials are referred to as seminars but the terminology used is often insignificant: both terms refer to probably the only form of student participation that takes place throughout these students’ academic legal education. The tutorial consists of analysing the answers, prepared in advanced (sic), to artificial Janet and John Doe problems or esoteric essay questions” (Web, 1996)

The traditional lecture is often of two or three hours duration, content driven and offering little by way of engagement for students. Further, the degree to which tutorial problems properly prepare trainees lawyers for practice in the real world may be open to doubt. The information required to resolve the problem rarely if ever comes conveniently summarised in a half-page tutorial question but instead has to be actively derived from a variety of sources. It is also necessary to separate relevant from irrelevant material.

Commentators on this paradigm of teaching and learning have observed:

“[T]here is a great deal of evidence about what constitutes good teaching in higher education. Almost every aspect of that evidence is at odds with the traditional model of legal education.” (Keyes & Johnstone, 2004)

Ramsden (1992) conceived that “the way in which anyone goes about learning is a relation between the person and the material being learned”. This “relation” may indicate either a surface approach to learning in which students rote learn and focus only on the superficial signs of what they have read or been told rather than the underlying meaning of those signs or alternatively a “deep approach to learning” in which students seek to understand, correlate what they are learning to existing knowledge and structure content into a coherent whole.

Laurillard (1993) has suggested a model for successful learning of law. The model comprises five phases, namely that students should:

- (1) become familiar with the key ideas and information in each area of law and know how these ideas and information are organised or structured;
- (2) accurately relate the language of the law to its underlying meaning;
- (3) act on simulated but realistic situations on the basis of what they know about the law, theories of law and the practice of law;
- (4) use feedback to modify their understanding and adjust their actions; and
- (5) reflect on actions and feedback in relation to the structured ideas in a given area of law.

Such a model involves the student in an active rather than passive mode of learning. Biggs (2003) cited Tyler (1949) in remarking that:

“Learning takes place through the active behaviour of the student; it is what *[they]* do that *[they]* learn, not what the teacher does.”

Perhaps the most realistic active learning experience that a law school may offer trainee lawyers involves some form of clinical education. Clinical education affords students the advantage of working on real world legal problems under supervision. The benefits of such programs as learning experiences are not to be underrated. However, the logistics of such measures can often constitute a substantial obstacle, in some cases an insuperable burden. Perhaps chief amongst these is the cost of such programs, staffing by appropriate supervisors and the physical inability to offer the opportunity to everyone when the student cohort is large.

ICT also offers the opportunity to provide an active learning experience for students which can conform to Laurillard's model for successful learning in law, but with the advantage of universal engagement of student cohorts, even large student cohorts.

Development costs: an insuperable barrier?

Perhaps the greatest obstacle to the introduction of ICT into any program relates to resourcing. Development usually requires the necessary software, the programming and design expertise and the time to create materials. One of the author's early projects *Crimson Parrot* (1993-94) involved a central scenario involving a barroom brawl devised by the author which then linked to separate modules on criminal law, evidence law, succession and criminal procedure which were written by other academics with specialist knowledge in those areas. Video comprised a large component of the project and included sequences of the bar room brawl filmed on a professionally dressed set in a television studio; court proceedings such as counsels' submissions and rulings by a judge filmed in the QUT Law Faculty Moot Court; several variations of a "death scene" filmed in a dressed mock hospital room in the university's School of Nursing on another campus; and several variations of service of court documents filmed in different locations around the university. The video was filmed and edited by the university's educational television facility. The video was then incorporated into the overall computer program, an exercise which required learning design and computer programmers. The project would not have been possible if not for a \$90,000 in funding from a university strategic initiative grant and \$40,000 university infrastructure grant.

Crimson Parrot is a clear example of a project requiring significant financial support. There is little doubt that the end product was successful. Even after 12 years the program is still in use and effectively achieving its objectives. It continues to achieve high survey results in those units in which it is used. The program was awarded a Queensland Government Information Technology and Telecommunications Award in 1995. However, if created today the cost would no doubt be greater, and at a time when there has been a decrease in funding for universities and a corresponding decrease in discretionary monies available to support such projects.

Funding is therefore a significant hurdle to negotiate. However, it need not be an insuperable obstacle. Some of the author's more recent projects have needed to be undertaken in the modern context. Costs can be minimised by utilising resources that are otherwise available. Where videos are to be made, professional actors are an expense that does not need to be incurred if there are willing and sufficiently extroverted students and/or colleagues who may be able to give sufficient (and on occasions quite proficient) performances. This has proven to be the case in all of the author's projects which have involved video (*Crimson Parrot* and others called *Viva: the Video* (1996), *The Merlin Affair* (2003-2004) and the forthcoming *Air Gondwana* (expected 2008)). Depending on the project, expenses associated with software

may be minimised by using software which is freely available. For example, the author's *Contracts Vignettes* podcasts (2006) were created using a borrowed steady cam and tripod, and the Microsoft Powerpoint, Sound Recorder and MovieMaker programs that are usually preloaded on personal computers. There are also template programs such as Hot Potatoes from the University of Victoria in Canada which are available, often via the Internet, either at no cost or for an affordable licence fee. The online virtual environment *Second Life*, which will be used in the author's forthcoming *Air Gondwana*, is also available for free. Even the online learning management systems which are now used by most universities and which offer the capacity to sub-page and hyperlink provide the opportunity to link resources in a way that previously required programming knowledge and skill.

The two resources for which no alternatives can be substituted are the imagination to conceive the project and finding the time to execute it. The latter of these can be a substantial commitment, particularly when competing with other duties. However, any time that can be committed to make a project successful can be an investment if the same project produces positive learning outcomes year after year.

Sophistication in design: eye candy and pedagogy

Crimson Parrot is particularly engaging because it essentially was video based: in other words, in its look it can be viewed like a movie for television. At its essence, however, it is, quite frankly, a very fancy multiple choice program and for that reason might be considered pedagogically uncomplicated. Multiple choice programs do serve a purpose. The author's first ICT program, *Computer Exercises in Contract Law* (CECL) (1990) was a text-based single module multiple-choice tutorial delivered via 5¼ inch floppy drive and was used in every year since its inception until 2000 when it metamorphosed into a three module online version *Online Sessions for Contract Review* (OSCaR) which continues to be used. Importantly the questions asked are short scenarios and the program provides detailed feedback on both correct and incorrect responses, including citation of case authorities and the case of incorrect responses drawing attention to points on the question that may have been overlooked or given insufficient consideration. The program continues to be well received by students, with every student completing the online survey after undertaking the program in the period 2001-2005 agreeing or strongly agreeing that the program assisted their learning. Even after 17 years the program is appreciated by students who often send unsolicited email praising it. Whilst the program is pedagogically uncomplicated in as much as it is basically a multiple choice exercise, it offers an easy to use means by which students may self-test their knowledge in a non-threatening way at their own pace and at their own convenience. In other words, it has a particular assignment and it continues to serve that purpose well despite the absence of moving pictures such as were featured so prominently in *Crimson Parrot*.

The author was the lead chief investigator of another collaborative program *LawSim* (1997) which had the brief of reducing the expense associated with producing ICT programs by removing the element of the program designer, which proved so costly in the *Crimson Parrot* project. In essence *LawSim* is a template program which is designed to produce ICT programs of varying kinds, including doctrinal, theory or policy based problem based programs using a variety of media including video, audio, graphics and text. Paradoxically, the program itself required large expenditure on learning design and program design and was supported by university funding in the amount of \$190,000. However, it has produced a number of successful outcomes including the author's programs *Whiskey Bravo* (1998), an 11 module program spanning a two semester contract law course, *Vlad's of Matavia* (1998), a

single module defamation program used in the unit *Torts*, and *The Merlin Affair* (2004), a multi-module program that spans a one semester media law unit, as well as a suite of modules across several units in the QUT Law Faculty's Legal Practice course, which provides law graduates with practical legal training. None of these modules required learning design or programming expertise, and were instead created on the desktop of the academic who wrote the content of the resources used. The ability to import a wide variety of media but without the expense of two elements traditionally associated with the production of ICT programs allows imaginative academics to create resources that lend programs an attractive and engaging character. In other words the academic can have the eye candy and eat it too!

A large part of the success of the *LawSim* family of programs has been the pedagogical underpinning of the original template program, which recognises the universal essence of problem solving: the bringing together of the problem, the resources needed to solve the problem, and the tools used to bring about that solution. Accordingly, while *LawSim* itself may have lacked the technological sophistication of *Crimson Parrot*, it had far greater pedagogical sophistication. Both forms of sophistication have led these programs to have an enduring quality and success. However in the case of *Crimson Parrot* that impact has been limited to the four units associated with the central scenario whereas *LawSim* has proved to be more open-ended and without such limit. In other words, the sophistication of the pedagogy is readily adaptable to any academic in any unit who chooses to use it rather than only those academics who were party to the original project.

Authentic learning environments: the angel is in the detail

It was noted that the third tenet of Laurillard's paradigm was that students should act on simulated but realistic situations. While a clinical program may be the closest experience to real-world practice that may be offered to the select few able to participate, properly designed ICT is capable of stimulating such realistic situations in a form allowing equal access by all members of a student cohort regardless of size. ICT has the capacity to provide authentic learning experiences by replicating the kind of task that are undertaken in practice (Anker et al, 2000). In this way the student learning experience may be linked with real-world experiences (Harris & Shirley, 2002).

Examples of such programs are those created using the *LawSim* template program, including *Whiskey Bravo*, *Vlad's of Matavia*, and *The Merlin Affair*. The common element of those modules produced using the template program is that the problems posed in the modules are resolved by accessing the necessary resources via an office metaphor, that is a depiction of a typical office workspace by way of a photo of an office desk and a photo of a library. The metaphorical office contains different potential sources of information in the form of a client file, a telephone, newspaper, in-tray, television, radio, bookshelf and computer access to the Internet. Each source represents a "hot spot", which when clicked reveals a list of the individual resources are available (if any) (see **Figures 1 and 2**).



Figure 1: Office Metaphor – the office desk



Figure 2: Office metaphor – the library

In this way, the student is placed in the position of a legal adviser who when faced with a problem must draw on a variety of sources of information, distinguish between relevant and irrelevant facts, organise and synthesise this material and apply the tools of legal analysis that he or she will have acquired in other law units to prepare an advice to a client. In the case of *Whiskey Bravo*, the modules dealt with the contractual dealings of the fictional Whiskey Bravo private airport, while *Vlad's of Matavia* involved defamatory reviews of the *Vlad's of Matavia* restaurant. Both programs utilised mainly text files representing newspapers, letters and maps and audio files of mock radio broadcasts. *The Merlin Affair*, however, was much more ambitious in depicting the story of a government minister alleged to have taken a bribe and the manner in which the various forms of mass media (including tabloid television current affairs, talkback radio, and broadsheet and tabloid newspaper) cover the story. The program follows the story unfolding chapter by chapter developing with each topic a media law course covered by the students each week (including confidentiality, privacy, defamation, contempt of court and racial vilification). The authenticity of the learning experience is facilitated by the depth of detail in storyline and the variety of resources used including an episode of a television current affairs show, newspaper reports, letters, extracts from *Hansard* Parliamentary reports and the like (see **Figures 3 and 4**). The program adds to this richness by including the perspectives of characters depicted in the story, such as the target of racial vilification, to add an additional dimension of realism to the learning experience.



Figure 3: Mock television current affairs program *The Truth Tonight*



Figure 4: Mock tabloid newspaper

Surveys of students conducted over the period 2004-2006 have shown an overwhelmingly response to the program. Students were surveyed in relation to, inter alia, whether they considered the program to be realistic (see **Table 1**), whether they felt that it served to show them how media law operated in practice (**Table 2**) and whether it aided their learning (**Table 3**).

Table 1: “The Merlin Affair provides a realistic setting to demonstrate the operation of media law”

Strongly agree	Agree	Neutral	Disagree	Strongly disagree
24	42	6	0	0
33%	59%	8%	0%	0%

Table 2: “The Merlin Affair has helped me to understand how media law operates in practice”

Strongly agree	Agree	Neutral	Disagree	Strongly disagree
20	48	3	1	0
28%	67%	4%	1%	0%

These results show 92% agreed or strongly agreed that *the Merlin Affair* provides a realistic setting to demonstrate the operation of media law, with no students thinking otherwise and that 94% agreed or strongly agreed that the program helped them to understand how media law operates in practice (see further Butler, 2006). Together these results may be taken as indicating that an overwhelming majority regards the program as providing an authentic learning environment.

Table 3: “The Merlin Affair has aided my understanding of Media Law”

Strongly agree	Agree	Neutral	Disagree	Strongly disagree
21	44	7	0	0
29%	61%	10%	0%	0%

This shows that overall 90% of students agreed or strongly agreed that the program aided their learning, with none dissenting from this view. This is strong evidence of the effectiveness of well designed ICT to provide a learning experience for students which can conform to Laurillard's model for successful learning in law.

Sustained reuse and reapplication

An important issue to consider when designing ICT programs relates to the shelf life of the program. The longevity of programs such as *CECL/OSCaR*, *Crimson Parrot* and *The Merlin Affair* relates to the way in which they were designed so that their content would not date quickly. Naturally, much will depend upon the subject matter of the program. The law is a constantly changing beast. Accordingly, if the program is designed in such a way that it makes reference to the current state of the law where that law is in a volatile area then the program is at risk of quickly dating and thereby losing effectiveness, regardless of its quality and the outcomes it produces. Indeed, this happened to a certain extent with one aspect of the criminal law module in the *Crimson Parrot*.

This problem can be addressed in at least two ways. The first is to make the ICT program easy to update or amend. This may still contemplate a future commitment of time but may be necessary if the subject matter requires it. A second way, utilised by the author in *Whiskey Bravo*, *Vlad's of Matavia* and *The Merlin Affair* was to utilise the programs for delivery of problems and resources which convey the necessary facts and other information whilst leaving the application of the law for students to undertake out of class, to be later discussed in class. Fact situations do not need to change even where the law does change: a change in the law may merely mean that a different outcome is reached on the same facts. In any event, the *LawSim* template was designed in such a way as to allow changes to be made to any modules produced using it.

Minimising unnecessary distractions

Bender (2003) has warned that when using online environments it is also important for the lecturer to minimise deterrents for effective learning, such as students facing technical difficulties or feeling overwhelmed. In other words, students should be focused on the content of the program and not distracted by technical issues.

In the author's experience, in order to be effective ICT programs must be easy to navigate around and resist imposing an onerous workload on students. This was a lesson learnt from when the *Whiskey Bravo* program was first introduced into the Contract Law unit at QUT. Surveys of students revealed that dissension with regard to the difficulty of printing the on-line resources (due to a deliberate, as it transpired incorrect, decision made in the design process) and the amount of work required to complete the modules detracted from the overall satisfaction with the program. Following this feedback, the modules were revised in terms of amount of content and the provision of more time provided in the program for the modules to be completed. Complaints concerning workload were minimised and overall satisfaction increased. Based on that lesson, *The Merlin Affair* was designed from the outset with ease of

navigation in mind, assisted by the provision of hints for the completion of problems, and the inclusion of as little unnecessary extraneous material in the resources as possible. The success of the tactic is shown by the fact that in surveys over three years only nine students found the program difficult to navigate around and only two did not find the tips to be useful. Similarly, in three years only two students complained that the workload in *The Merlin Affair* was not appropriate (Butler, 2006) (see **Tables 4 and 5**).

Table 4: “The Merlin Affair was easy to navigate around”

Strongly agree	Agree	Neutral	Disagree	Strongly disagree
12	43	8	7	2
17%	59%	11%	10%	3%

Table 5: “The amount of workload associated with The Merlin Affair is appropriate”

Strongly agree	Agree	Neutral	Disagree	Strongly disagree
16	42	12	2	0
22%	58%	17%	3%	0%

It must be acknowledged that in some cases there can be a tension between providing sufficient detail to present an authentic experience and attempting to minimise extraneous materials with workload considerations in mind. This can be a delicate balancing exercise which, judging from survey results, has been successfully achieved in *The Merlin Affair*.

Formative feedback

ICT programs represent an opportunity to provide formative feedback efficiently and effectively. The traditional model of legal education may allow the provision of formative assessment in the form of, for example, comments made in response to student contributions in small group tutorials or similar and comments made on a written work submitted by students. Both forms of feedback may be effective, but are accompanied by disadvantages. For example, some students may, due to cultural or other personality traits, be reluctant to fully participate in small groups. They may benefit from feedback given to fellow students but may not obtain feedback on their own understandings. Submission of written work may result in detailed and personalised feedback, but may amount to an increase of workload for both student and academic. This may be a substantial increase for the academic where the cohort of students is large and many or all seek to obtain feedback in this fashion.

As noted, the online tutorial *OSCaR*, whilst relatively simple in design and pedagogy, has, in one form or another, for over 17 years been an effective tool for the provision of formative feedback to students. The program is easy to use, and allows students to self test their knowledge and understanding at their own pace and convenience in an environment that is non-threatening. The program provides full formative feedback on both correct and incorrect answers and does not require a commitment of academic time (other than that used in its creation).

Utilising an ICT program to provide desired formative feedback allows a consistency in instruction across a student cohort regardless of size, and regardless of whether the student’s mode of study is full time, part time, or from a distance.

Conclusion

Net.gen students do not share the same frame of reference as most of the academics who are teaching them at university – who tend to be what Prensky (2001) called “digital immigrants”. They have no knowledge of, nor care for, the “the way things have always been done”. That attitude that “what was good for me is good for them” no longer has validity, if it ever did. The traditional model of legal education – such as a program of weekly two or three hour content-driven “chalk and talk” lectures combined with tutorials – is no longer regarded as reflecting a quality learning experience. For a generation which is intuitively comfortable with exponential change – and which perhaps has studied nanotechnology and been exposed to be exciting and interesting teaching experiences at school – higher education using traditional methods must seem like stepping back to the 20th century.

ICT may pose many challenges, especially for those of us who were not born into a world experiencing such fast growth in computing power. However, there is enormous value and opportunity presented by the capacity of well designed ICT to, among other things, portray realistic, authentic learning experiences and provide effective formative feedback to facilitate improved student learning. Further, ICT can provide the same learning experience to all students in a cohort, regardless of its size or their location or mode of study, and can provide the same learning experience year after year. ICT is capable of better engaging students with their learning than is now possible using traditional methods. Indeed for students of a generation that has grown up with computer games and computer devices of many kinds, incorporating ICT into their higher education experience can even make tertiary learning seem like fun.

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