

EXTERNAL EVALUATION REPORT

*Periodic Programme Evaluation of the
LLM Programme 'Information and
Communication Technology Law'*

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INTRODUCTON

A Committee of four members was appointed to conduct an external evaluation of the LLM programme in Information and Communication Technology Law offered by the Faculty of Law at the University of Oslo, Norway. The evaluation is part of the first periodic programme evaluation to be carried out for this programme and was carried in time for the stated deadline of mid-September 2016. This Report represents the outcome of the external evaluation.

ABOUT THE COMMITTEE

The External Evaluation Committee consists of Professor Dan Jerker B. Svantesson from the Faculty of Law at Bond University (Australia) (as chair), Haakon Bratsberg from the Telenor Group, Professor Tomas Gomez-Arostegui from Lewis & Clark Law School (US), and Andreea Rusu as student representative. Individually, and much more so collectively, the Committee has a diverse and extensive experience and expertise in the ICT law field.

Given the geographical diversity of the group, the Committee has not had the opportunity to meet in person. Communication has been via e-mail and Skype. This has worked well and the lack of face-to-face meetings has not hindered the Committee's work.

MANDATE OF THE COMMITTEE

The Committee is asked to comment on the existing programme in light of best practices at other universities. The Committee should also take into account the current and future demand for ICT law experts internationally in law firms, ICT industry, academia and the public sector.

MATERIALS AVAILABLE TO THE COMMITTEE

The Committee benefitted greatly from the detailed Internal Evaluation Report (and its annexes) prepared by the LLM Programme Director, Associate Professor Tobias Mahler, in collaboration with the NRCCL's Director, Professor Lee Bygrave and LLM student Andreea Rusu. However, the Committee has also sought out additional sources of information such as the course details available at: <http://www.uio.no/english/studies/programmes/ictlaw-master/structure/>, not included *per se* in the Internal Evaluation Report. Furthermore, the Committee has directed specific questions to members of the LLM Programme, and we are grateful for the answers we received to those questions.

Taken together, the Committee has thus had a rich source of information upon which it makes its observations and upon which it bases its conclusions.

SUMMARY OF OBSERVATIONS, RECOMMENDATIONS AND CONCLUSIONS

- The *LLM Programme 'Information and Communication Technology Law'* fills an important function for the Faculty and the University, by contributing to the international standing of the Faculty and the University.
- The *LLM Programme 'Information and Communication Technology Law'* fills an important function for society by producing qualified graduates with much needed specialist knowledge.
- The *LLM Programme 'Information and Communication Technology Law'* is attracting a large number of quality students, and the student selection process seems appropriate. Appropriate, indeed innovative, steps are already being pursued in order to increase the number of Norwegian students that attend the Programme.
- While there are alternatives that ought to be considered, the structure of the *LLM Programme 'Information and Communication Technology Law'* is appropriate, the topics covered are relevant, and the materials relied upon are appropriate.
- The *LLM Programme 'Information and Communication Technology Law'* is organised and operated by devoted and skilled staff, and given the particularly close connection between teaching and research in this field, it is important that the teaching staff is provided with adequate time to remain highly research active.
- The *LLM Programme 'Information and Communication Technology Law'* may benefit from increasing reliance on teaching other than through traditional lectures. In fact, the options of: (1) making class attendance mandatory, (2) attaching marks to class participation, (3) reforming the use of podcasts, and (4) increasing the number of class hours, ought to be considered.
- The *LLM Programme 'Information and Communication Technology Law'* has a strong research focus, which should be maintained.

- The combination of knowledge, skills and general competence that the graduates of the *LLM Programme 'Information and Communication Technology Law'* bring with them into their work lives ought to make them attractive on the job market.
- The company visits, conference trips and academic visits, as well as the physical proximity between staff and students of the *LLM Programme 'Information and Communication Technology Law'*, combine to create a unique teaching environment.
- It can be expected that the *LLM Programme 'Information and Communication Technology Law'* will face increased competition in the years to come. However, the impact of this increased competition may well be offset by a likely increase in interest in this type of programme.
- Great care must be taken to ensure that the *LLM Programme 'Information and Communication Technology Law'*: (1) remains close to the 'cutting edge', (2) avoids the risk of 'siloiing', and (3) remains sufficiently resourced to preserve its high quality.

GENERAL OBSERVATIONS

It should be stressed from the outset that the Committee is impressed by the *LLM Programme 'Information and Communication Technology Law'* and by the sustained work carried out over the years to maintain, and indeed, improve it. The LLM programme, alongside other LLM programmes like it within the Faculty of Law are crucially important for the international repute of the Faculty. In addition, this particular programme – with its focus on an area that will only continue to increase in significance – clearly functions as an important vehicle for spreading, and indeed developing, knowledge of great societal value. Thus, the merits of the programme as such, both for the University and for society more broadly, is beyond questioning and nothing in the below takes away from that fact.

READING MATERIALS

The reading materials generally seem appropriate, relevant and up-to-date. While essential, this cannot be taken for granted in fast-moving fields such as those addressed within the *LLM Programme 'Information and Communication Technology Law'*, and it is clear that the teaching staff devotes a considerable amount of time to keeping abreast of the latest literature.

Having said that, the Committee noted some differences in the compositions of the reading lists for the different courses, and took note of the criticism directed at the reading materials for JUS5660 - Intellectual Property Law in the Information Society (see below).

STUDENT RECRUITMENT

The internal report suggests that there is a desire to enrol more students from North America. The Committee's experience is limited to the United States, but we get the sense that it will be difficult to draw more students from the US. Law student debt in the US is now quite simply astronomical, and we are unlikely to see many law graduates being able to move abroad. Although the Oslo program has no tuition fee, the cost of living can be prohibitively

expensive; the website suggests NOK 50 000 per semester, meaning NOK 150 000 (app. \$17 863 US) in total for the program. Compounding matters, students in the United States are unlikely to be able to borrow the money necessary to attend a program abroad. The availability of federally subsidized loans is typically limited to programs in the United States. A more robust scholarship program would likely be necessary to attract more US students.

TEACHING HOURS

The Internal Evaluation Report states that each course contains 22 hours of instruction, most of which is in the form of lectures. This seems to the Committee to be less than what used to be on offer. Indeed, in the past, the amount of instruction on offer per course was nearly double. While it is true that more courses are taught now (three a semester instead of two a semester) we are concerned about any reduction in coverage.

The Committee believes that some courses could warrant more time than others. That is to say, they do not all need to be 2-hour-a-week classes. Perhaps some, like Intellectual Property, should be 3 credit hours a week. Of course, this would likely require more faculty.

PODCASTS

The Internal Evaluation Report notes that most courses offer podcasts and, in another part of the Report, that student attendance is not always exemplary. Podcasts can never provide the same experience as does being in the classroom. At the same time, the Committee does endorse the approach of students having access to podcasts in a program like this, where nearly every student uses English as a second language. To have a podcast available for review after the course is a great aid for comprehension.

TUITION FEE

At p. 24, the Internal Evaluation Report discusses the lack of tuition fee as a strength. This is both logical and appropriate, and the Committee agrees with this assessment. However, the Committee also recognises that adding a tuition fee could potentially be a strength too assuming two important conditions were to be met: (1) that the *LLM Programme 'Information and Communication Technology Law'* still attracts students of a sufficiently high quality, and (2) that the funds brought in through the tuition fee can be used to bolster the programmes' resources.

As neither of these important condition can be taken for granted, and as at least the fulfilment of the first condition cannot be assured in advance, the option of introducing a tuition fee represents a very real risk to the future of the programme.

PARTICULARLY NOTEWORTHY AREAS OF STRENGTH

Going through the materials, several particularly noteworthy strengths are obvious. The most important of these is doubtlessly the dedication of staff without which no other strengths would matter. This dedication comes to the fore in various parts of the materials, and in different manifestations.

In this context, the physical proximity between teaching staff and students may be important. The library is clearly one of the best of its kind, and from a student point of view, the possibility to study close to the teacher's offices is advantageous in ensuring that where questions, or a need for guidance, arises, the students can easily have a discussion and solve any problem, avoiding in this way the slow and passive communication through emails. The physical proximity between teaching staff and students is also advantageous because it is enriching the teacher-student relationship; this is especially important in an educational system where, virtually, the only physical interaction are the classes.

Apart from this, there are some other particularly noteworthy areas of strength the Committee wishes to emphasise.

THE EXPERTISE OF THE FACULTY

Apart from the already mentioned dedication, the Committee also wishes to note the considerable expertise of the staff involved in teaching the *LLM Programme 'Information and Communication Technology Law'*; most are of international repute, some as leaders in their fields, all of them with strong reputations.

The mentioned expertise is obviously important on several levels; it no doubt helps keep the teaching relevant and cutting edge, but it also helps ensure the international standing of the programme as such, in turn assisting student recruitment.

In light of this, the link between teaching and research is strong and it is important that those involved in the teaching are sufficiently resourced so as to be able to remain active in their research as well.

THE COMBINATION OF KNOWLEDGE, SKILLS AND GENERAL COMPETENCE

Page two of the Internal Evaluation Report provides a valuable description of what the Programme sets out to achieve. While most of the components listed under the sub-heading “Knowledge”, and some of the components listed under the other two sub-headings, are expected, others – such as “Ability to suggest and assess alternative forms of regulation to traditional law, in accordance with ideals of fairness and justice” are less obvious. Such components must be seen as innovative and add value beyond what can be seen as standard practise. It deserves to be emphasised that the combination of knowledge, skills and general competence that the graduates bring with them clearly will serve them well in the, no doubt diverse, roles they go into in their work lives.

THE ABILITY TO LOOK BEYOND GRADE AVERAGE OF APPLICANTS

At least with the Programme’s current, healthy, number of applicants, the programme is positioned to only select high quality applicants. This is, in its own right, promising for the future.

The Internal Evaluation Report describes how “[r]elevant professional experience/practice and motivation for the study” is taken into account when assessing applicants. Such a practise ought to be important for most, if not all, study programmes. However, it is the Committee’s view that this approach is of particular significance for a programme such as this where practical experience is important, yet where no-one can have practical experience from all aspects of the subject matter. In this context it is important that students with practical experience can contribute to the class discussions and thereby assist the learning of their peers.

THE STRONG RESEARCH FOCUS

It is perhaps not unusual for an LLM programme to have a strong research focus. Indeed, such a focus is often a characteristic feature of LLM programmes. Be that as it may, the

Committee nevertheless thought it important to emphasise the significance of this focus and to acknowledge the successful approach taken by the *LLM Programme 'Information and Communication Technology Law'* in this regard.

The Master thesis is clearly the most important component of the research focus. However, in addition, the structure of “paper workshops” and individual feedback on draft papers, the coordination of papers and exams, as well as, the practice of peer commenting on mid-term papers are valuable and to be applauded.

THE COMPANY VISITS, CONFERENCES AND STUDY TRIPS

The company visits that form part of the Programme are clearly much appreciated by the students and represent value adding (and seemingly quite unique) opportunities. They create connections between students and future employers, and additionally, students see the practical side of the theory they learnt during the courses. Much of this also applies to the students' attendance at academic conferences, and the study trips.

All these value-adding components are clearly fantastic tools for creating the unique educational experience that is the *LLM Programme 'Information and Communication Technology Law'*.

AREAS REQUIRING SPECIAL ATTENTION

Despite the many positive aspects of the *LLM Programme 'Information and Communication Technology Law'* outlined and discussed above, there are nevertheless certain areas requiring special attention. Some of these areas stem from internal conditions, and others stem from external conditions. The Committee acknowledges that, particularly in the case of those areas stemming from external conditions, there may be little that can be done by the staff responsible for the *LLM Programme 'Information and Communication Technology Law'* but to monitor the developments.

INCREASING COMPETITION

While the *LLM Programme 'Information and Communication Technology Law'* no doubt was pioneering when first introduced, information technology law, and therefore the teaching of information technology law, is increasingly becoming mainstream. While this no doubt emphasises the importance of the LLM Programme, it also means that there are more and more competing programmes.

The Oslo programme's strong international standing is partly attributable to its longevity, but the need to remain relevant and competitive (and if possible, unique) will only increase. The Committee notes that some competing programs have adopted unique structures setting them apart from more classical LLM programmes in the field. Most strikingly, the 1-year Master of Arts in Law Information Technology Law at the University of Tartu is designed to provide the students with both technical and legal skills and includes courses such as "Introduction to Programming". Other LLM programs in the field are different due to their delivery method such as the online distance learning LLM in Information Technology at the University of Edinburgh.

With this increasing diversity, the *LLM Programme 'Information and Communication Technology Law'* will no doubt be subject to increasing competition. However, this increase in competition may well be offset by the increase in interest in the field sparking greater student numbers. Not least given the diversity of markets from which the students come, it is of course not possible here to speculate as to the general level of need for lawyers in all

those markets. However, at least anecdotal evidence suggests that the need for ICT law trained lawyers certainly will increase.

THE CHALLENGE OF KEEPING THE CURRICULUM 'CUTTING EDGE'

There are at least two serious challenges when it comes to keeping the curriculum close to the cutting edge. The first is a macro issue of ensuring that the 'right' courses are being taught. The second is a micro issue of ensuring that what is taught – and the materials used – is the most relevant content available. Both these challenges are felt particularly strongly in fast-moving areas such as the one this Programme addresses.

It is important that the courses are constantly updated so as to reflect the most current developments such as for example, the Internet of Things, and legal aspects of Artificial Intelligence. Apart from actually being taught, it is important that such developments also are reflected in marketing materials and course descriptions.

THE RISK OF 'SILOING'

Ultimately, information technology and communications law is a bundle of different subjects and there is a constant risk of 'siloing' between the different program modules that may lead to the students failing to get an adequate overview of how the different pieces are linked together.

The Internal Evaluation Report already includes measures to counter this risk. Yet, the Committee feels that it is important that this risk is constantly acknowledged and monitored.

JUS5650 – ENFORCEMENT AND DISPUTE RESOLUTION IN A DIGITAL CONTEXT

Course JUS5650 titled “Enforcement and Dispute Resolution in a Digital Context” is broad and diverse – perhaps too broad and too diverse – in its scope. As such, it comes across as somewhat of a collection of topics that did not fit in anywhere else but that nevertheless are recognised as important. The result is a somewhat odd mix of computer crime, alternative dispute resolution (including its history), private international law and *lex informatica* – topics with no more of a common theme than just about any combination of topics ordinarily addressed within the ICT law field may have; that is, any topics taught within the ICT law field may be seen to have as their primary objective the aim of providing “insight into the regulatory impact of ICT as such” (Internal Evaluation Report, at p. 10). At least on paper, this comes across as a weakness in the programme.

JUS5660 - INTELLECTUAL PROPERTY LAW IN THE INFORMATION SOCIETY

The reading materials for JUS5660 - Intellectual Property Law in the Information Society (as outlined at: <http://www.uio.no/studier/emner/jus/jus/JUS5660/h16/pensumliste/index.html>) includes considerably fewer items than the others. The Committee recognises the importance of the prescribed textbook, and acknowledges that it is supplemented by one supplementary text, as well as a rich selection of primary materials. Furthermore, while we are aware that the course outlines sometimes add a number of articles to the reading list published on the website, in general, we think it is good with a wider reading list as is the standard in the other courses.

As the report shows (Section 6.2 General evaluation from meetings with students and the NOKUT survey), the mandatory reading material for JUS5660 - Intellectual Property Law in the Information Society had received heavy criticism that it does not suits the course goals.

RECOMMENDATIONS

While the *LLM Programme 'Information and Communication Technology Law'* clearly is doing well, the Committee wishes to put forward a set of recommendations that usefully could be considered for the Programme.

PROGRAMME STRUCTURE

It is no doubt telling that different members of the Committee came up with different proposals as to how the Programme's structure may be improved. The reality is that this is a topic on which reasonable persons may disagree, and it is consequently obvious that the current structure may well be maintained. Nevertheless, the Committee wishes to put forward a set of possible options for reform as to the Programme's structure.

First, one option would be to introduce a new module – a capstone module that aims to expose the students to the bigger picture. For example, focus could be placed on the role of, and legal issues faced by, Internet intermediaries as such entities frequently are placed in the precarious position of having to balance various interest addressed within the programme (e.g. privacy and data protection vs. intellectual property law), and to do so in a cross-border context. Such a course would have several benefits. For example, it could help overcome the risk of a compartmentalised thinking on these issues that clearly are interconnected. Further, such a course may provide greater flexibility with regards to what topics are covered in-depth in the other modules from year to year.

Second, one option would be to place greater emphasis on cyber security and security aspects of privacy and telecom law as well as general security legislation as these are increasingly important topics. This is an area where the cross border nature of the internet meets requirements related to national autonomy and security.

Third, one option is to address international issues – as a separate course – early on in the programme. Given the international nature of the Internet, international issues arise in all settings of information and communications law. In light of this, it may be valuable for the students to early on gain a solid understanding of how (and to what extent) the law – via public, and private, international law – addresses these international issues.

In addition, the Committee endorses the creative proposals articulated in the Internal Evaluation Report, such as the alternative timing of courses (p. 30) particularly the parallel approach with 3 phases, the introduction of electives (p.31) and the idea of introducing specialised profiles (p.31).

ALTERNATIVES TO LECTURES

The Internal Evaluation Report notes that: “teachers are increasingly using other teaching methods that open up for a more active student involvement, such as workshops, seminars, short debates and moot courts.” (p. 12) It also mentions that students are required to write “mandatory papers”.

The Committee is of the view that these are important component of the students’ learning and encourages further moves in this direction compared to a lecture-dominated teaching. In fact, the Committee is of the view that class attendance ought to be made mandatory (preferably with marks assigned to individual components such as class presentations, short papers and moots) to encourage the students to engage with these components.

THE NUMBER OF HOURS IN THE CLASSROOM

In light of the recommendations above, one additional – in a sense associated – recommendation may be appropriate; the Committee recommends that the possibility of increasing the number of hours in the classroom be considered so as to cater for increased content coverage as well as a greater number of interactive components, such as moots, class presentations and the like.

READING MATERIALS

Given the heavy criticism expressed at the reading list for JUS5660 - Intellectual Property Law in the Information Society, as discussed above, the Committee recommends that the current list be reviewed with the aim of ensuring diverse reading lists, for example, by drawing upon relevant articles in the field. The Committee notes that, with the expertise held by the teaching staff, it should not be a particularly onerous task to – where needed – update the literature to reflect today's hot topics.

More generally, the Committee notes that, many law professors in the United States who teach intellectual property or cyberspace law have discarded traditional print casebooks, which are often updated only once every four or five years, and are now instead using electronic textbooks (often distributed for free or at much reduced prices online as PDFs) that are updated every summer. Where text books are suggested for the reading list for a course, this alternative could be considered.

LINKING THE LLM STUDENTS TO THE NRCCL'S RESEARCH ACTIVITIES

Further, the Committee recommends that more is done to introduce the students of the LLM program to the research activities of NRCCL. It would no doubt be beneficial for the students to know more about the institute's work and events, and this could further contribute to the sense of belonging which already comes across quite strongly. Indeed, where possible, the students could perhaps actually be involved in the NRCCL's research activities. As an example, consideration may be given to how students could be involved in projects like SIGNAL (<http://www.jus.uio.no/ifp/english/research/projects/nrccl/signal/>).

REFORM THE USE OF PODCASTS

Where the availability of podcasts comes across as a real alternative to actual physical class attendance, some students simply will not attend class. The Committee recommends that two options are considered to address this. Option one is to make class attendance

mandatory and mark students down on their final grade for excessive absences. The second option is more of a compromise position; do not make class attendance mandatory for the program *per se*, but make it mandatory for access to the podcasts. That is to say, students will be given access to a podcast for a particular class session so long as they were actually in class that day. Some exceptions might also need to be made for a student who is out sick, etc. This would entail some administrative burden on the faculty, but possibly not much.

COURSE EVALUATIONS

The report notes that specific courses are evaluated only every three years and that there have occasionally been more general NOKUT evaluations. It also notes that participation by students in the evaluation process has been low. Based on the experience at the Lewis & Clark Law School (US), there are several possibilities that the Committee thinks the NRCCCL should consider. First, at the Lewis & Clark Law School, every course is evaluated every year by students. The evaluation period occurs on the last day of class and before the exams occur. This ensures that the evaluation is based more on the course than on the students' marks on the exam. Doing the evaluation in class also helps ensure that there is a high response rate, especially given that class attendance at Lewis & Clark is generally mandatory. The evaluations are, of course, anonymously prepared and professors are required to leave the room while the students fill out the evaluation forms. In the past, the evaluation forms were done in writing, but nowadays Lewis & Clark Law has an online form that the students can use. In both cases, the students are asked to rate the course and the professor(s) on a scale of one to five on a number of different metrics. They are also asked to comment in prose on both the course materials and the professor(s)' presentation effectiveness etc. Professors are not allowed to review their evaluations until after they have handed in all their marks for the semester. The evaluations (at least the numerical scores) are then made available online to all law school students (through a password-protected page) so that students can use them to help decide which courses to take in the future. The Committee does not think making them available online would be necessary at the NRCCCL given that students currently cannot take any electives, but we do think feedback every year is valuable.

THE INTERNATIONAL OUTREACH

The international outreach of the programme has clearly been a great success. As noted in the Internal Evaluation Report, however: "A further increase in the number of Norwegian students is desirable, because this may help contribute to a greater integration of the student group in the Norwegian student community and in Norwegian society."

Perhaps counter-intuitively, the aim of increasing the number of Norwegian students has been pursued through further international outreach in the form of enabling students undertaking the *LLM Programme 'Information and Communication Technology Law'* to spend one of the teaching semesters at a foreign university. The Committee endorses this innovative approach.*

The second initiative discussed to attract additional Norwegian students – the possible introduction of a dedicated focus area on ICT law integrated into the regular Norwegian law education in Oslo – should also be pursued. Doing so will not only benefit the *LLM Programme 'Information and Communication Technology Law'*, but represents a natural development given the increasing centrality and ubiquity of ICT.

ENSURING ENGLISH LANGUAGE PROFICIENCY

The Internal Evaluation Report notes that measures have been taken on a university level to address the issue of inadequate English language proficiency amongst some students. The Committee recommends that this matter be subjected to close monitoring to ensure that the issue is in fact addressed by these measures taken.

* The Chair acknowledges a possible bias in that he is associated with one of the foreign universities at which the students may spend one semester.

INTERNATIONAL MATERIALS

All courses have an international dimension in that experiences gained from foreign countries are included in the teaching. This is to be commended. Judging by the materials provided to the Committee, there seems to be scope for taking a somewhat more coordinated and deliberate approach towards what foreign materials are included. In light of this, the Committee recommends that an evaluation is carried out in which the teaching staff maps out what foreign sources are used in the teaching. Such an exercise may reveal potential gaps, and will force conscious and coordinated decisions to be made as to which foreign countries ought to be included. Having said this, we hasten to acknowledge the need for flexibility in the selection of materials.

In addition, students could be asked to contribute to expanding the knowledge of the legal situation in foreign jurisdictions. In more detail, students could be asked to analyse how their national laws address specific issues and then present their findings in class discussions, class presentations, papers or indeed articles, allowing the class as a whole to identify similarities and differences between countries. This type of exercise has, at least, the following advantages:

- (1) it helps the student become aware of where their respective countries stand in regard to that specific issue (this may be particularly valuable in relation to students that come from small countries about whose legislations not much is found in the selected texts for the courses);
- (2) it increases the students' interaction during the class as the findings could raise debates;
- (3) subject to the students agreeing, it could represent a starting point for building a database with students' papers or articles that could be read and developed by future students; and
- (4) in the case of articles, it could serve as a motivation for students to publish works that are focused on their respective countries' law, contributing in this way to the overall need of international knowledge about a specific issue.

CONCLUDING REMARKS

The Committee is unanimous in the view that those who are, and have been, involved in establishing and running the *LLM Programme 'Information and Communication Technology Law'* ought to be congratulated on a job well done. The Committee hopes to see the *LLM Programme 'Information and Communication Technology Law'* continue to develop and to continue to produce valued graduates over the years to come.