

Privacy and Cloud-Based Educational Technology in British Columbia

A background paper

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ABSTRACT

Seeking a balance between the risks and benefits of using social media and cloud-based technology, B.C. post-secondary institutions have approached this issue in a diversity of ways. All have one thing in common: the need for clarity around what is or is not aligned with B.C.'s privacy legislation.

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Introduction

This background paper follows a BCcampus report in Spring 2010 that investigated possibilities for a YouTube-like video service for educational content in B.C. The report found students are learning from their textbooks, in the classroom and the lab, but they're not getting all their coursework done by traditional means. Students and instructors are increasingly using content generated by their peers and others as formal requirements to completing their courses via participatory media and social software (like YouTube and Blip.tv).

Besides streaming video, instructors and students are using other social media such as blogs, Facebook pages, instant messaging, Twitter, Google Docs, and other third party, U.S.-based social media services to collaborate in a learning environment.

These services offer many advantages: they are inexpensive, robust, feature-rich, intuitive to the user, easy to access and easy to share with peers. They also offer many disadvantages: chief of which is the risk to privacy and security of user's personal information posed by these services.

Social media services are commercial ventures. They earn revenue from advertisers or partners who use the data voluntarily submitted by users to target their marketing efforts. In other words: the commercial product bought and sold isn't the social media application itself, rather it is the users themselves and the rich, detailed information they willingly provide online about their consumer habits.¹

Social media companies are almost exclusively based in the United States, where the provisions of the Patriot Act apply no matter where the information originates. The Patriot Act allows the U.S. government to access the social media content and the personally identifying information without the end users' knowledge or consent.

The government of British Columbia, concerned with both the privacy and security of personal information, enacted a stringent piece of legislation to protect the personal information of British Columbians. The Freedom of Information and Protection of Privacy Act (FIPPA) mandates that no personally identifying information of British Columbians can be collected without their knowledge and consent, and that such information not be used for anything other than the purpose for which it was originally collected.

¹ Alistair Kroll; Who Owns Your Data?; Mashable; January 2011

There is a concern that, because of the implications of the Patriot Act, these U.S.-based cloud/social media services may not comply with FIPPA if used in the context of formal academic work. The BCcampus report on streaming video servers pointed to a “need for a deeper discussion around the limitations of the Freedom of Information and Protection of Privacy Act (FIPPA) of British Columbia, the Patriot Act (U.S.A) and 3rd party hosted services.”

In the fall of 2010 BCcampus emailed representatives from all B.C.’s 25 colleges and universities with a series of questions (see appendix). Nine institutions replied, some with emailed responses and some as telephone interviews. The responses indicate British Columbia’s post-secondary sector is concerned about protecting student privacy, and they are also interested in finding inexpensive, effective, relevant and accessible technology for their learning environments.

Seeking a balance between the risks and benefits of using social media and cloud-based technology, B.C. post-secondary institutions have approached this issue in a diversity of ways. Some institutions are afraid to authorize any “web 2.0” technologies because of privacy concerns, some have used workarounds, and some have just gone ahead and implemented institution-wide technologies to the best of their ability.

All have one thing in common: the need for clarity around what is or is not aligned with B.C.’s privacy legislation.

Definitions:

This paper will illustrate the concerns and issues post-secondary institutions have encountered with social media/cloud computing, using the information gleaned from interviews with instructors, teaching and learning centres and IT administrators. There are two types of cloud-based services discussed here:

Cloud-based computing at an institution-level

Cloud computing is a loose and evolving term generally referring to the increasing use of computer applications that are web-based². A cloud-based application does not need to be downloaded to a user’s computer or institutional servers, and the data used by the application and inputted by the user is housed on servers elsewhere. The application works remotely: it’s not physically present, it could be anywhere in the world (hence the term “in the cloud”). In fact, most

² See one definition here: <http://csrc.nist.gov/groups/SNS/cloud-computing/cloud-def-v15.doc>

such data is stored on servers found in the United States, near the head offices of the web companies providing the service. Some larger companies like Google and Facebook have servers distributed globally.

At an institution-wide level, examples of cloud computing could include using Google Mail and Google Docs for all faculty and student email and document creation and collaboration, PBWorks or other cloud-based Wiki services, Vimeo, YouTube or other streaming video services.

Social media as it relates to individual instructors

Social media applications are by definition cloud-based: Facebook, MySpace, Twitter, Blogging services like WordPress.com, Blogger, Tumblr or Posterous, or link sharing sites like StumbleUpon, Digg. Any individual may sign on and start using such services independent of their institutional affiliations. Our interviews found that some individual instructors, recognizing their students are heavy users of social media, are using these services in a learning context for class projects, much of the time without the knowledge or oversight of the post-secondary institution.

A few other terms are used throughout:

FIPPA (B.C.'s Privacy Act)

The Freedom of Information and Protection of Privacy Act³ places restrictions on public bodies and service providers from storing, accessing or disclosing personal information outside of Canada. Pursuant to section 30.1 of the Act, a public body (and its service providers) must ensure that personal information is stored only in Canada and accessed only in Canada as follows:

A public body must ensure that personal information in its custody or under its control is stored only in Canada and accessed only in Canada, unless one of the following applies:

- (a) if the individual the information is about has identified the information and has consented, in the prescribed manner, to it being stored in or accessed from, as applicable, another jurisdiction;
- (b) if it is stored in or accessed from another jurisdiction for the purpose of disclosure allowed under this Act;
- (c) if it was disclosed under section 33.1(1)(i.1).

³ The full text of the Act is here: http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/96165_00

Personally identifying information

Schedule 1 of the FIPPA defines personal information (or personally-identifying information, or PII) as recorded information about an identifiable individual other than contact information. Contact information means information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business e-mail or business fax number of the individual.

Contact information of students is considered personal information and must be protected.

Educational technology:

Educational technology is the study and ethical practice of facilitating learning and improving performance by creating, using, and managing appropriate technological processes and resources.⁴

Also known variously as e-learning, instructional technology and learning technology, educational technology is the use of technology to support the learning process. Although the term can refer to all kinds of analogue technologies, e.g. photographs, film, video, audio recordings etc, it is usually used to talk specifically about digital computer technology.⁵

Why go to the cloud? Part 1: features

Going to the cloud as a solution to post-secondary technological resource issues, and grappling with privacy and security because of it, is happening worldwide. The primary reason seems to be robust features, ease of use and convenience.

At Boise State University, faculty and staff requested a new email and web system to share documents and create web sites, but they also got an instant messaging feature with the cloud-based system they eventually adopted: Google Apps. “We knew Google Apps provided us with communication and collaboration tools suited for the next decade of the 21st century.”⁶

Boise made the decision to switch email for a combination of three reasons: to take advantage of robust technology that would support research, teaching and learning, to sunset technology that no longer served the university’s needs, and to achieve cost efficiencies in

4 The Definition of Educational Technology by the Association for Educational Communications and Technology (AECT) Definition and Terminology Committee June 1, 2004

5 <http://edtech.twinisles.com/rb>

6 Bolt, Brian, Fitzgerald, Mark and Jessen, Shad; “Implementing Google Apps for Faculty and Staff;” ECAR Research Bulletin 21, 2010, EDUCAUSE Centre for Applied Research.

deploying and supporting email and collaboration technology. Traditionally, an institution would buy proprietary software and host it themselves. With a hosted service like MS Exchange, dedicated staff need to design, build, administer and support the system on an ongoing basis, leaving the institution with fewer resources to allocate to other projects. Licensing costs for proprietary systems are steep, and Boise found such hosted systems didn't offer the collaborative functions of Google Apps.

Money and technology is not the sole, or even the first, consideration for institutions looking to use cloud-based technology. "Any decision to replace one ... system with another must be founded on alignment with an institution's stated strategic objectives."⁷

Here in B.C., the Vancouver Community College has also delegated its email and collaboration suite to the cloud: Microsoft Live@EDU, which offers the ability to collaborate and share documents and use online applications like Word, PowerPoint and Excel. Like Google Apps, the Microsoft version enhances functionality users get out of email in that it is also a collaboration tool. Each account comes with Skydrive: 25 gigabytes of space in the cloud where users can store documents and back up assignments from their computer.

Ben Guanzon, the CIO for VCC, said there was a clear business case for taking email and collaboration to the cloud and focusing more on supporting their learning management systems: "We have other things to do than retain an email platform ... We now have more support for our application set - Moodle included. It's now a completely supported platform." Guanzon is also aware certain areas of the college use Google Docs in their classes.

Peter Rawsthorne is the Interim Manager of Information Technology on contract to the Continuing Legal Education Society of BC (CLEBC), an independent professional development organization facing the same issues in terms of FIPPA and cloud-based services in a learning environment. Law professionals must do 12 hours of certified professional development accreditation each year, and CLEBC provides those courses.

CLEBC uses face-to-face workshops, web-based streaming video, online courses, practice manuals and optimized search engines to provide these continuing education services. They are moving increasingly to a Community of Practice (COP) model for online education that is peer-to-peer based, and thus dependent on user participation and interaction.

⁷ Bolt, Fitzgerald and Jessen, 2010

As such, CLEBC technology platforms model COP-based learning for the legal profession, where the Master-Apprentice model remains strong and where volunteers constantly add to the knowledge base.

CLEBC has dived right in to online learning based on a geographically distributed membership whose time is constrained, whose access to adequate bandwidth varies and who are only able to participate in short bursts on line.

Cloud computing has become a necessity for CLEBC, and most “cloud” servers are in the U.S. “We don’t have good cloud service in Canada, too bad a Canadian institution hasn't stepped up to create a cloud resource,” says Rawsthorne. “There’s no understanding of the advantages of the cloud.”

At University of Northern British Columbia (UNBC), the Centre for Teaching and Learning⁸ assists faculty with Twitter integration in their class blogs and also uses Amazon EC2 cloud services for graphics rendering in online simulations. For video streaming, UNBC uses unbc.blip.tv, a professional version of the popular Blip service that allows UNBC to keep videos private and not indexed by blip.tv or search engines. Grant Potter is the E-Learning co-ordinator for UNBC’s CTL: “These private videos are embedded in our learning management system: all videos set to private are visible only to instructors/students in their respective courses.

Any videos on the streaming service set to 'public' are available at <http://unbc.blip.tv> and cross-posted to our iTunes podcast⁹. The podcast contains audio and video recordings of visiting guest speakers or special presentations at UNBC that we have obtained permission to publish.”

Focusing on e-learning, Judy McIvor at Selkirk College works with all the staff to use Moodle (a hosted, not cloud-based, learning management system) in different ways, from fully online courses to supplementing in-person courses.

At Selkirk, a number of services have been used to augment the learning environment:

- Sword - a service that allows peer-review of students' work. It requires students to submit their course work, and their first and last name.
- French language exercises from the University of Texas. This service does not require disclosure of any PII.
- One instructor uses MSN chat to interact with students online.

⁸ <http://www.unbc.ca/ctl>

⁹ <http://itunes.apple.com/us/podcast/university-northern-british/id329188968?ign-mpt=uo=4>

- Basecamp has a chat tool Selkirk has used in the past because it was fast and provided a summary of the chat they could pull off and then delete immediately from the cloud.
- DimDim web conferencing was a simple, cost-effective alternative - but Selkirk didn't use it because it was not based in Canada. The advantage of this tool was ease of use. The students/users were not required to download software to their local machines, and it was simple to use. "Elluminate and Adobe Connect are way too robust for our instructors to use. They needed too much training. If they were going to have a participatory chat they needed two people to manage the technology."

In the course of her work, McIvor has found instructors using Moodle to send students to applications based in the U.S., and who have no idea they may be in contravention of FIPPA. She reported it's hard to direct instructors otherwise because they tell her "this is exactly what I need for my students," however her usual response to using social media is: "I don't recommend it." She suspects many instructors are using social media applications on the side, under the radar.

Kwantlen University¹⁰ has a new Bachelor of Arts degree in Marketing Management that has an emphasis on social media for marketing. Faculty members in this program are using Twitter and WordPress as required elements of at least some of their courses. Faculty members are free to use the tools they are comfortable with but for most instructors, the sense is use of social media is still at the experimental stage.

Faculty at Kwantlen use Facebook, Twitter, WordPress (both an in-house installation, and the hosted cloud-based service are used) and other hosted blog services, Windows Live (for students), You-Tube (mostly viewing rather than contributing). At an institutional level, it is unknown to what extent these tools are required components of courses or whether alternatives are offered.

Kwantlen has used Accuplacer, a U.S.-based testing system, for some time. There have been concerns recently about the student information collected by Accuplacer and discussion on whether a Canadian version is needed.

College of the Rockies (COTR) seriously considered using Google Mail and Google Docs but gave up the idea because of concerns they couldn't reach an agreement with Google that complied with the provincial FIPPA.

¹⁰ Respondents from Kwantlen: Ann McBurnie, Operations Manager, Library Resources (on behalf of Cathy MacDonald, University Librarian), Maggie Fung, Executive Director, Information and Educational Technology, and Kathleen Bigsby, Director, Institutional Analysis and Planning

Like other institutions, COTR has faculty keen on using social media in a learning environment. “We had one instructor who wanted to use YouTube – the students were already uploading to it – but someone told her she couldn’t do it,” said Gina Bennett, educational technology director from COTR.

Why go to the cloud? Part 2: cost savings

The second important factor prompting post-secondary institutions to use cloud-based services is their cost-effectiveness.

At Boise: “We knew our decision to move faculty and staff to this solution would put us at the forefront. At a time when many institutions were outsourcing student e-mail, a 2008 Campus Computing Survey found that less than 15% of universities has outsourced e-mail services for faculty and staff. Now that our Google Apps implementation is behind us, we have been able to spend the past two years allocating resources that would have otherwise been dedicated to e-mail support to develop additional core initiatives that align with the strategy of the university.”¹¹

None of the representatives from B.C. post-secondary institutions who answered our questions had taken the step of estimating actual cost savings of using cloud-based services, however some reported anecdotally the savings would be substantial.

Ben Guanzon from VCC oversaw the implementation of Microsoft Live@EDU service for 100,000 student email accounts. “Once we provide an email account to a student they retain it for life, and active usage of those accounts was only 30 per cent. Why devote resources to it? [Live@EDU] is a very big benefit in terms of efficiency and cost-savings. I went down the path of a business case: Live@EDU costs us zero dollars. Costs of staff supporting and maintaining email accounts - including hardware costs - were all erased.”

Peter Rawsthorne reported that: “Rackspace [the cloud service CLEBC uses] means we can put up and tear down our own servers. Other servers make you use their own platform, their own API, it's their standard. With Rackspace I can use Linux servers and choose the programming language that I want to use. I can put up a server in two hours to host a streaming service and do it cheaply.”

The alternative to cloud-based servers is “an order of magnitude; cost-wise \$1,000 year versus \$10,000 per year ... It takes a few days to get the physical server in and get someone to set

11 Bolt, Fitzgerald and Jessen 2010

it up,” says Rawsthorne. “Anecdotally we pay \$40 for two servers that are self maintaining - no need for system administrator. All software is open source.”

In the case of UNBC’s use of Amazon EC2: “It was impossible to host what we needed on a virtual machine and we did not have funds to purchase a rack mounted dedicated server. EC2 was our only choice if we were going to move forward.”

Privacy and security

Privacy and security of personally identifying and other information is a real concern to post-secondary institutions even without considering the legislative environment.

In the Boise State University experience with Google, “...the concerns over security largely came down to three questions:

1. Do we trust our limited network and system engineering resources to protect our data better than the security staff and resources available to Google?
2. If our messaging, communication and documents are stored at a data centre we do not own, do we still own the data?
3. If our messaging, communication and documents are stored at a data centre we do not own, will our data be used in ways that we, as owners of the data, do not approve?”¹²

They were reassured on all counts after further discussions with Google. “In fact, we still face many of the same data security threats as before because some threats exist regardless of the messaging system being used.”¹³ This is primarily because users will send data gleaned in the institution outside the institution’s own domain. Once it leaves, the PSI has no control over where it goes, how it is used or who sees it.

All B.C. post-secondary institutions surveyed are concerned with the privacy and security of their students’ personal information and online security.

At Vancouver Community College, Ben Guanzon’s team, as they explored the possibilities of a cloud-based service, consulted the legal services of the college to ensure they were in compliance with FIPPA. Section 30.1 of the Act mandated VCC to inform students before they enroll that the email system is based in the cloud, and obtain their consent. If students don’t

¹² Bolt, Fitzgerald and Jessen, 2010

¹³ *ibid*

consent, they are free to use their already-existing email account as their primary email as a VCC student.

“We already had students using Hotmail, Google accounts,” said Guanzon. “Most of them had already overstepped that boundary. When we did roll out Live@EDU there were a couple of students who contacted me about it - using their Gmail accounts - worried about storage of data in the U.S.! [I explained] they still have an option - they could give us a preferred email account other than @vcc.ca. Of those who did take that option, their main reason was around privacy, interestingly enough.”

Continuing Legal Education Society of B.C. is very aware of the advantages - and risks - of single sign-on issues in the cloud. It is very convenient that any partner anywhere in the world can get access credentials from CLEBC servers, but any information subject to FIPPA is kept on servers in Canada. CLEBC uses encrypted tokens to keep information private but also publish on open standard. No private information (“nothing beyond what would be on a business card” as specified in the Act) is passed on in the hand-off to the Rackspace server.

“I would rather be hosting this stuff in Canada,” says Peter Rawsthorne of CLEBC, “but that service isn't available to me at this time.”

CLEBC did not seek approval or advice from the provincial government to see if this workaround is allowed under the FIPPA. “I've asked for case law on this stuff with respect to education and there is none,” he says. “So we are mindful. We're trying to prove that it's possible to use cloud-based services and remain in the legislation. You can effectively deploy small learning environments into the cloud and be nimble about it ... it's amazing how quick you can get stuff done at low cost.”

At Royal Roads University, Mary Burgess from the Teaching and Learning Centre reported: “We are using some of these tools in courses now, but we don't require students to use any technology that is hosted in the U.S., it's always optional. We don't actually usually reject [cloud-based] technologies; rather we give students a choice about whether or not to use them. That said, we have looked at Survey Monkey as an option here, but rejected it solely on the basis of its hosting in the U.S.”

Rather than using technological workarounds or consent forms, Selkirk College simply tells instructors not to use cloud-based technology, and doesn't use it institution-wide. Mandating the use of consent forms “probably will discourage instructors from using technologies that are web-based.”

“Students should be able to make these choices for themselves - but a lot of times they don't know.” Even with consent forms, “Instructors won't have resources to have alternatives available for students who don't consent.”

Many of the institutions contacted did not have a policy on use of cloud-based services, whether at an institution level or at an instructor level. While many (such as Selkirk) discourage its use, they cannot monitor each instance. In the absence of accessible institution-wide web-based social collaboration tools, individual instructors are using what most of their students are using already, which leads to a patchwork of standards and practices.

For instance, a marketing instructor at Royal Roads University contacted for this paper told us he makes liberal use of social media in his courses: “I don't have any particular insight or information. I didn't pay an attorney to figure out the difference between U.S. and Canadian privacy laws and whether this fits into them. I'm simply operating on the basis that YouTube and Vimeo are out there and we can use them - as long as we explain to the students that there is a possibility of these information requests coming down the road if indeed someone thinks that they're a terrorist.”

UNBC does require from students a 'Terms of Use' consent for the plagiarism detection software, SafeAssign¹⁴. Faculty members are asked to include SafeAssign information in their course outlines to allow students advance notice and opportunity to discuss any concerns with respective instructors. They rejected a similar software package, TurnItIn.com, in 2007 due to privacy concerns.

At UNBC, some instructors were using Facebook for class use but have shied away since the Canadian Privacy Commissioner started publicly chastising¹⁵ the social media company for violations of the federal PIPEDA (Personal Information Protection and Electronic Documents Act).

Peter Rawsthorne from CLEBC uses cloud services because they are much more affordable in terms of time and money. As quoted above, he reported: “We're trying to prove that it's possible to use cloud-based services and remain in the legislation. You can effectively deploy small learning environments into the cloud and be nimble about it ... it's amazing how quick you can get stuff done at low cost.”

¹⁴ <http://safeassign.com/>

¹⁵ http://www.cippic.ca/uploads/CIPPICFacebookComplaint_29May08.pdf

The situation at the University of Calgary is quite different. Alberta's legislation is not as stringent as B.C.'s. For instance, in using the web-based survey application SurveyMonkey, the University of Calgary reports:

"The Calgary Ethics Review Board requires that I insert this statement into participants' informed consent provisions:

'The online survey is being administered by Surveymonkey©, an American software company. As such, your responses are subject to U.S. laws, including the U.S.A Patriot Act. The risks associated with participation are minimal, however, and similar to those associated with many e-mail programs, such as Hotmail© and social utilities spaces, such as Facebook© and MySpace©.'"

Simon Fraser University and University of British Columbia ethics boards would take a different view about SurveyMonkey. A typical UBC department guideline memo¹⁶ states:

"Section 30.1 has an impact when it comes to using online surveys. Two popular online survey companies that are routinely used are Survey Monkey and Zoomerang. Both of these companies are located in the United States and maintain their servers in the U.S. In order to use these companies a list of email addresses needs to be provided to the online survey company so that survey participants can be contacted regarding a survey. Email addresses are considered personal information, unless they are a business e-mail addresses, and cannot be disclosed to survey companies outside of Canada without the consent of the individuals. In order to be in compliance with the Act, Canadian companies with servers located in Canada should be used for survey purposes instead of using online survey companies located outside of Canada."

At Kwantlen University, the Institutional Analysis and Planning department provides survey software for research related to institutional planning, evaluation and decision-making. They have opted for internally hosted software (Vovici) due to privacy concerns. They advise faculty against using U.S.-based survey services and recommend Jitsutech¹⁷ to faculty for personal research.

BCcampus found no comprehensive policy on cloud-based application use at SFU (this is typical system-wide). However, a working group developed a guideline which is "Use of Social

16 <http://www.math.ubc.ca/MathNet/Application/OnlineSurveysMemo.pdf>

17 <http://www.jitsutech.com/>

Networking Sites: Key Messages for Students, Staff and Educators,” a portion of which is included as Appendix 2.

Conclusion

There is a distinction between institution-mandated use of cloud services and individual use of these services. However the two are related. As institutions decline to offer such services at an institution-wide level, more instructors (the technologically savvy ones) are turning to these services ad-hoc.

Until the FIPPA is clarified for educational organizations, there are varied responses to the use of cloud-based services, ranging from using the services with workarounds (i.e. UNBC, CLEBC), to discouraging their use altogether or simply not considering them (i.e. Selkirk, Kwantlen).

According to CLEBC, B.C. post-secondary sector needs to discuss this issue head-on: “Let’s push hard and be nimble and provide the best most cost effective service ... [post-secondary institutions] are risk-averse -- but if they don't become nimble they could slowly find themselves disappearing - more and more credentials and assessment is happening elsewhere and we're becoming irrelevant.”

At Royal Roads University, there is no formal institution-wide policy on use of cloud-based technologies, but the Teaching and Learning centre does have guidelines and advises instructors on their use. “We’re definitely still looking at hosting software here rather than going with cloud-based options because of [privacy] concerns,” said Mary Burgess.

Judy McIvor at Selkirk College said: “I am really keen to get answers on use of Cloud-based and social media services in education. I want learning to happen - if there's a good U.S. site to allow that, why can't we use them?”

Kwantlen responded that familiarity and comfort levels with cloud-based services are more of a barrier at this point than privacy concerns, at least for individual instructors. Currently decisions about whether to use, and how to use, cloud-based services remain at an instructor level at Kwantlen. An institution-wide privacy policy is under review, and in absence of policy, these decisions are up to the individual faculty members.

According to Gina Bennett at COTR, FIPPA requirements aren’t well understood. “[Post-secondary institutions] use extreme caution, they don’t act -out of fear-- or they fly under the radar,” when they consider using cloud-based services or social media.

“I wish we could have ‘openness people’ rather than ‘privacy people’ at institutions. We should be all about sharing. What is the purpose of the academy if not for sharing ideas?”

Vancouver Island University has explored FIPPA concerns at the academic/instructor level. With support from BCcampus, they’ve published guidelines for instructor’s use of cloud-based social media applications, which are available on the BCcampus Shared Online Learning Repository (SOL*R) under a Creative Commons License. They also have some specific recommendations and questions around what the B.C. post secondary sector needs from government and what instructors need from their administrations:

- Getting clear-cut responses from the Office of the BC Privacy Commissioner is important to enabling post-secondary administrators to provide correct advice and guidance on FIPPA related questions. What can the BC government ministry [responsible for FIPPA] do to facilitate this?
- Adopting new technology systems is challenging. There are questions around adapting to technology support, good stewardship of information, and putting faculty and the institutions at risk through lack of information. What can the BC government ministry [responsible for FIPPA] do to assist post-secondary institutions to provide direction on using hosted services or applications when data is stored on servers outside of Canada while remaining in compliance with FIPPA?
- The process to resolving issues is to objectively evaluate risk, to practice due diligence and to apply common sense. It is common practice to inform and advise on a regular basis through protocols and practices. What effective processes can the BC government ministry [responsible for FIPPA] facilitate so institutions have up-to-date and reliable information on which to deal with technology-related issues placed on them by FIPPA? For example, a central archive to store shared service around problem solving for others at post-secondary around storing of information; a body designated to institutions so there are more standards and consistency in applying practice; and monthly briefings to institutions on FIPPA implications, recommendations and solutions for dealing with post secondary FIPPA related matters.
- An institution’s privacy matters as they relate to using technologies are embedded in posted policies and procedures. The Chief Information Officer is the FIPPA officer for the institution and consults with legal counsel as needed. However, there is strength in group learning and problem-solving from Chief Information Officers at institutions. How can

these relationships be strengthened and how can their information be relayed to other post-secondary institutions and the government ministry responsible for FIPPA compliance at post-secondary institutions?

- As mentioned above, Vancouver Island University, through a BCcampus research grant, assisted in the developing of the guide 'Privacy Guide for Faculty Using 3rd Party Web Technology (Social Media) in Public Post-Secondary Courses. Post-secondary institutions are using this guide to assist their faculty to be in FIPPA compliance when requesting students to use web-based technologies. Who will invest in this guide, or one like it, and keep it updated?
- How can a 'big plan' be developed and implemented to enable institutions to be proactive, productive and consistent in dealing with technology-related FIPPA issues? There is a sense of urgency to respond to and resource this function. How can the important conversation on FIPPA at post-secondary institutions be kept alive and pragmatic? How can there be more institutional administrative awareness of how FIPPA is affecting operations? How can institutions be fluid in their planning around FIPPA issues?

The questions and recommendations outlined in this paper are intended to "keep the conversation alive" and form a basis for future actions by the B.C. post-secondary sector in educating each other and making recommendations for future action.

Appendix 1: survey questions

The following survey was sent to representatives from all 25 of British Columbia's post-secondary institutions in Fall 2010 and winter 2011:

BCcampus seeks information for a position paper on Privacy and Educational Technology. We are gathering concrete examples that reflect the experience of post-secondary institutions contemplating the use of cloud computing or social media services for teaching and learning.

This follows from a BCcampus report in Spring 2010 (posted on the bccampus.ca here) that investigated possibilities for a YouTube-like video service for educational content in B.C. That report found students are learning from their textbooks, in the classroom and the lab, but they're not getting all their coursework done by traditional means. With information gathering trending towards participatory media and social software (like YouTube and Blip.tv) students and instructors are increasingly using content generated by their peers and others as formal requirements to completing their courses.

The report also pointed to a "need for a deeper discussion around the limitations of the Freedom of Information and Protection of Privacy Act (FIPPA) of British Columbia, the Patriot Act (U.S.A) and 3rd party hosted services." There is a concern that, because of the implications of the Patriot Act, these U.S.-based services may not comply with of B.C.'s Privacy legislation if used in the context of formal academic work.

Also of note in the BCcampus video server report was the following finding:
"All participants agreed that before any work began to create a service motivated primarily by privacy concerns, that legal opinion be sought at the provincial level as to any possible workarounds (e.g. informed consent) to using U.S.-based 3rd party services. While the higher education use case does present some special concerns that large commercial services may not address, it was universally acknowledged that the students already knew about and used these services, and that the technical quality of the service is likely far higher than anything that could be produced locally. So, the commercial option should be exhausted before creating a parallel service."

Questions:

- At your institution, are there any instructors/programs wanting to use U.S.-based cloud/soc med services for an educational purpose?
- Have you put ion a request or inquiry to the Office of the CIO or the Office of the Privacy commissioner regarding using any of these services in a teaching setting?
- Have you considered but rejected technology because of FIPPA concerns?
- Have you estimated any cost savings to using these services rather than implementing another hosted service?

- What is your institution's involvement in privacy matters as they relate to using these technologies? i.e. Instructor level, department level, teaching & learning centre level, or is there an institution-wide policy?
- Do you have any examples of work-arounds, challenges, issues regarding use of this technology?
- Who is the person in your institution in charge of privacy concerns as they relate to teaching and learning?

Appendix 2: UBC memorandum regarding use of surveys

THE UNIVERSITY OF BRITISH COLUMBIA

MEMORANDUM

To: The University Community

From: Access & Privacy Manager, Office of the University Counsel

RE: The Freedom of Information and Protection of Privacy Act and Online Surveys

Disclaimer: The information contained in this memorandum is intended to provide general information only with respect to the Freedom of Information and Protection of Privacy Act and online surveys. It is not a substitute for proper legal advice. Please note that the information in this memorandum may be updated without notice.

RE: The Act and Online Surveys Office of the University Counsel Page 2 of 3

Under section 30 of the BC Freedom of Information and Protection of Privacy Act (the “Act”) a public body has an obligation to protect personal information in its custody or under its control from unauthorized access, collection, use, disclosure or disposal.

Schedule 1 of the Act defines personal information as recorded information about an identifiable individual other than contact information. And contact information means information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business e-mail or business fax number of the individual.

Contact information of students is considered personal information and must be protected.

The Act places restrictions on public bodies and service providers from storing, accessing or disclosing personal information outside of Canada. Pursuant to section 30.1 of the Act, a public body (and its service providers) must ensure that personal information is stored only in Canada and accessed only in Canada as follows:

A public body must ensure that personal information in its custody or under its control it store only in Canada and accessed only in Canada, unless once of the following applies:

- a) If the individual the information is about has identified the information and has consented, in the prescribed manner, to it being stored in or accessed from, as applicable, another jurisdiction;
- b) if it is stored in or accessed from another jurisdiction for the purpose of disclosure allowed under this Act;
- c) if it was disclosed under section 33.1(1)(i.1).

Section 30.1 has an impact when it comes to using online surveys. Two popular online survey companies that are routinely used are Survey Monkey and Zoomerang. Both of these companies are located in the United States and maintain their servers in the U.S. In order to use these companies a list of email addresses needs to be provided to the online survey company so that survey participants can be contacted regarding a survey. Email addresses are considered

personal information, unless they are a business e-mail addresses, and cannot be disclosed to survey companies outside of Canada without the consent of the individuals.

In order to be in compliance with the Act, Canadian companies with servers located in Canada should be used for survey purposes instead of using online survey companies located outside of Canada.

Right here on campus we have the services of Applied Research and Evaluation Services (ARES). ARES are survey specialists and can assist you with online survey needs including the design of survey questions. To find out more about ARES's services, please contact ARES as follows:

•••

By telephone at 604-822-9144 By e-mail at ares@ares.ubc.ca By visiting their website at www.ares.ubc.ca.

If you have any questions regarding the information in this memorandum, please contact the Access & Privacy Manager, Christina Ulveteg, directly by e-mail at Christina.ulveteg@ubc.ca or by telephone at 604-822-2451.

References: The Freedom of Information and Protection of Privacy Act, R.S.B.C. 1996, c. 165 December 2006

Appendix 2: Partial text of a policy on use of social media at Simon Fraser University

Social Networking Key Messages for SFU Students, Staff and Educators

April 3, 2008

V1.06 (Final) [Section 2, for instructors]

Be a model: exercise appropriate discretion when communicating online, knowing that your behaviour may be used as a model by students.

Be knowledgeable: participation in social networking environments for university-related work and courses must be optional and cannot be imposed. Students and staff invited to use social networking sites as a part of their coursework or jobs must be given a protection of privacy notice so that a decision to participate is based on informed consent.**

Be considerate: when engaging University stakeholders through social networking systems, always remember you are representing Simon Fraser University and are bound by the Freedom of Information and Protection of Privacy Act of BC and the University's privacy policies (I10.04 and I10.05). Remember too, that data collected through most social networking software resides in the USA.*

*Note: all information transacted via US-based social networking sites is stored permanently in the USA, becomes the property of the service provider and can be used by that provider for any purpose without your consent, and is subject to investigation without notice by the US government under the authority of the Patriot Act.

** Privacy notice when using social networking sites:

The [course/program area] has decided to use the [name of service] social networking site and related applications as a convenient service to students. Your use of this site and its related applications is voluntary. Please be advised that the personal information disclosed to the social networking site, either by yourself directly or by the University with your consent, is stored on servers located outside of Canada. As a result, retention, access to, and the secondary use and disclosure of your personal information are subject to the social networking site's terms of use, privacy policies and foreign law. To make an informed decision, please read the social networking site's terms of use and privacy policies before using the service and giving your consent.

Simon Fraser University encourages all community members (students, faculty, staff and alumni) to exercise caution when revealing information about themselves online, and particularly when using social networking sites. Please be aware of the personal information you are revealing

about yourself and how this information could be used now and in the future.

Please note that the social networking site's privacy settings can be used to restrict access to your profile.

[Note: in addition to the above, use the statement below when the university seeks permission to disclose to a social networking service personal information that SFU has collected.]

Having read the notice above, I give my consent to disclose my personal information under the terms and conditions described below:

- 1) The personal information to be disclosed is [describe the personal information disclosed]
- 2) The personal information may be disclosed to [name of social networking site]
- 3) The personal information is disclosed for the purpose of [describe the purpose]
- 4) This consent to disclose my personal information expires on [set a date or event when consent expires]