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Critical assessment of using wikis in legal education

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ABSTRACT

Wikis serve to support collaborative writing on the web. The best known example of a wiki is Wikipedia, an open encyclopedia on the web. This paper is meant to explore possible uses of a wiki-environment in legal education. Firstly, it describes the actual use of a closed wiki environment in a class on Cybercrime in the Netherlands. Secondly, the paper explores the possibilities for international collaboration of students without face to face contact. Innovative use of wikis in learning situations demands insights in educational design and best practices of educators. We will show that for students as well as educators the use of a wiki is an easy and effective way of using technology in order to get engaged in new forms of learning. The paper is intended for legal educators who share an interest in innovative approaches to legal education.

INTRODUCTION

Maharg (2006) describes how, in the real world, learning apprentices gradually move from safe peripheral participation in a community into risk zones. This is valid for students, who need a safe zone to engage in learning, and it also valid for professional educators, who need to learn how to fit their personal theories of learning in forms of innovative teaching. Therefore, Maharg stresses the importance of forming communities of practitioners to learn from each other about best practices in law. Teaching such practices in the field of law by using ICT demands a transformative meta-theory of professional legal education. 1

Although professional training is organised in a different way in the Netherlands, the discussions on the use of ICT in the development of academic and professional skills arise the same questions internationally. The following picture arises from a bundle of opinions of Dutch legal professionals on academic skills (Brouwer, 2005). ICT should support students to exercise creative writing and decision making aimed at a service oriented profession. At the end of this article we present some statements of educators and practitioners leading to that conclusion. Frequent references were made by these professionals to an old quote by the famous Dutch scholar, Paul Scholten, on the essence of the legal profession. 'Finding law (rechtsvinding) is both an intellectual and an intuitive moral activity (Asser and Scholten, 1931).' 2

This perspective transcends the border between academic and professional skills, and should encourage educators and students to explore a broader view on the law as well as the personal moral implications of legal decisions. This view also covers the research, discussion and negotiation preceding legal judgement, as well as the learning process to participate in these activities. And finally this view points to the specific relation between negotiations on value for the process of personal learning on the one hand, and for the skills required in the legal profession on the other hand. As was illustrated by Maharg and Paliwala (2002), this insight is a valuable starting point for the use of ICT in legal education. It is a special need of legal education that the responsibility for knowledge construction and participation in the group processes are intertwined at some level. We will explore if and how a wiki-environment can support this. 3

Wikis enable new forms of collaboration in structuring, representing and discussing knowledge. This 4

article will explore how these forms of collaborations can be effective in legal education. Based on the experiences in a class on ICT and Law, aiming at a broader view on regulation of Cybercrime, we explore potential further development of such collaboration. A wiki-environment offers students the opportunity to use advanced communication methods in their learning process, and to collaborate in the process of reflecting on the use of legal resources.

A positive side effect of the use of an open wiki may be that it stimulates present-day scholars to make their work available in open access for reference purposes. At present legal scholarship is locked inside the 'walled gardens' of commercial databases (Hunter, 2005), which is an impediment to the involvement of students in comparative law. Benkler (Benkler, 2006) introduces the concept of 'institutional ecology' for choices urges to map the choices that interact to increase and decrease the availability of basic resources for information production and exchange. He recommends to monitor institutional impediments towards an increase of the availability for basic resources. We experienced an example of this 'institutional ecology' in the dependency of the institution on the closed Blackboard environment. Support from the institution is driven by the wish to embed the functionality of a wiki within the closed learning environment of Blackboard. This experiment is meant to construct know-how that can eventually support transparent and open content in the legal domain. 5

During the course of 2006 students in the class on Cybercrime published their assignments in a closed wiki environment (a wiki that is only accessible to the participants). The main assignment was to write an advice to improve regulation on 'information security' within our university (the so-called 'Acceptable Use Policy'). Within that framework students were free to choose their own research question, guided by three assignments. The structure of the assignments builds upon a traditional approach in Dutch legal education in which students write papers. This approach is labour-intensive for the teacher. Therefore, these kind of assignments are mainly given in the end phase of the academic study. Yet there seems to be a broad acknowledgement that involvement in 'real' cases is a good way to acquire legal knowledge and competences. The use of a wiki enables a shift from a teacher-centred, to a student-centred writing culture. At the same time for the teachers involved, it offers an opportunity to make explicit how collaboration takes place in legal scholarship. 6

A potential advantage of a wiki-environment would be that it offers great opportunities chances for international collaboration. Eventually, when clear policies on quality, dispute resolution and user involvement are established, it will be possible to share the results in an open wiki-environment (a wiki that is accessible for anyone over the internet). For international collaboration, the question is whether the chosen approach proves to be scalable. At present the students work in a local group with many opportunities for personal contact, outside the wiki-environment. Can the design be effective for international collaboration without face-to-face contact? And at the level of the educators, how can the students' learning process be supported by collaboration? Being innovative professionals in legal education, what can we learn from each other? 7

TASKS AND LEARNING OUTCOMES FOR THE USE OF A CLOSED WIKI IN A PRATICAL SITUATION: A CLASS ON CYBERCRIME

A wiki is a freely expandable collection of interlinked Web 'pages', a hypertext system for storing and modifying information – a database, where each page is easily editable by any user (Leuf and Cunningham, 2001, p. 16). The use of a closed wiki-environment in an educational setting provides a safe authoring environment. We assumed it might help to get the Internet-generation engaged in legal scholarship. We used a closed wiki on an experimental base with a small mixed class of third year law students. A student-assistant, with extensive skills in the use of ICT, also participated in the course. In the preparatory phase, we invited a senior Wikipedia-moderator. He explained that involvement in a wiki is intended to be quick and simple, and he showed us how to monitor contributions in the community by watching the 'recent changes' pages. We thought an advantage of using the same wiki-engine as Wikipedia could be that students could easily pick-up best practices from Wikipedia, for example, by copying layouts. This proved to be the case, and by exploring the functioning of their own wiki environment they wrote an extensive tips & tricks page, as part of the wiki, for solving 'technical' and layout problems. Our preparation resulted in a community portal, which grew during the course (fig. 1). 8

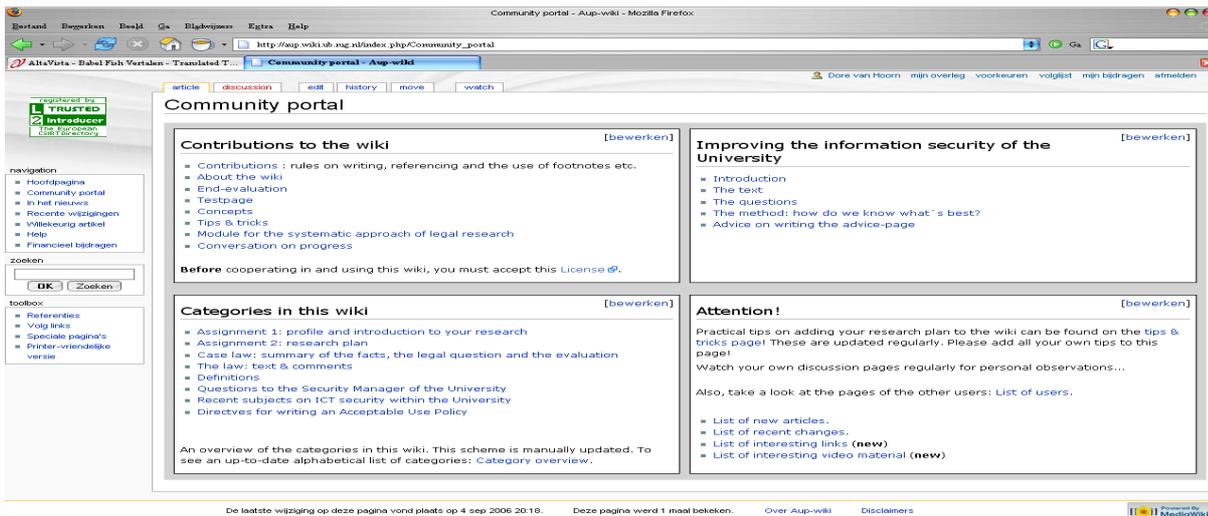


Fig. 1.

In the foregoing years, we developed the following learning outcomes for the course. Students need to gain a general insight in the relevant positive law and the influence of harmonisation and regulation on an international level. In addition, students need to discover that the prevention of Cybercrime necessitates a multi-layered approach, based on a recognition that not only states but also end-users/user-groups, markets and legal code have a regulatory role (Lessig, 1999). They need to understand how, in this specific field, self-regulation relates to legal certainty. As premises for the main assignment, we chose to achieve these outcomes by following the insights of William Twining in his approach to understand the influence of globalisation on law.

“If the task of the discipline of law is to advance the understanding of law in the modern world, the facts of globalisation and interdependence, although open to multiple interpretations, dictate that even the most local phenomenon needs to be viewed in everwidening contexts, up to and including the world and humankind in general. (Twining, 2000, p. 89)”

To have a common focus, the general assignment was to examine the Acceptable Use Policy for the university computer systems and to give advice on improvements based on research into specific aspects relevant to information security. The security manager of the institution was a guest speaker and the members of the security group within the institution joined the wiki. In addition to the shared information in the wiki, the Dutch handbook on ICT and criminal law (Koops, 2004) was prescribed reading for the course. We used the university's electronic learning environment, Blackboard, to help with the planning of the assignments and to give advice on relevant resources.

During one semester, there was face-to-face contact every other week. Half way through the course we arranged an individual meeting with all students to discuss their research plan and check their level of acquired knowledge. In fact, the students were given three assignments. The first assignment was to make a profile, a userpage, explaining their interest in the course. Subsequently, the students made a research plan, based on an online module (please make a hyperlink of the text in bold URL: http://rechten.uvt.nl/ICTenRecht/juridisch_onderzoek/) showing the steps needed to do legal research (Hoorn & Van Hoorn, 2005). Finally, in the second half of the semester, the students had to collaborate, construct wiki pages and present their research. The purpose of the first assignment was to acquire orientation on the topics and on the group. The student-assistant was surprised to find that after she had loaded up her profile, she was invited on MSN by other members of the group. The students were obviously interested in each others' profiles. Details in the profile also made it easier to address the specific interests of the students. Further the assignment provided an easy way to become familiar with the use of a wiki. Most students had no prior experience in making a research plan. For some students it required several versions before they could develop a research plan that satisfied them. They considered this to be a valuable learning experience. Through the wiki they could learn from the progress of other students. One student submitted several proposals and received comments from the other students. In the second half of the semester the students did presentations on their research. For some the wiki proved to be an effective presentation tool as well. A student presented the main line of their argument in his main wikipage and made separate pages for comments on jurisprudence and examples. This was a synoptic method for separating ones own text from official text

(and ones comments to that). This way other students were able to refer to the same jurisprudence and law articles, without directly referring to an element of a text written writing by another student. This method stimulated the reuse of information and knowledge.

In the preparatory phase we decided that it was the task of the teacher to elaborate an example in the wiki, illustrating the learning outcomes behind the assignments. We also made a list of issues questioning the present Acceptable Use Policy from the perspective of criminal regulation. The questions were more elaborated, but they came down to the following. Is it clear what behaviour can lead to what sanctions and who is allowed to investigate what? Also, in the first set up of the wiki we made a page describing standards for a useable contribution to the wiki (fig. 2). A well documented page for instance gives references to other resources and enables scholarly discussion.

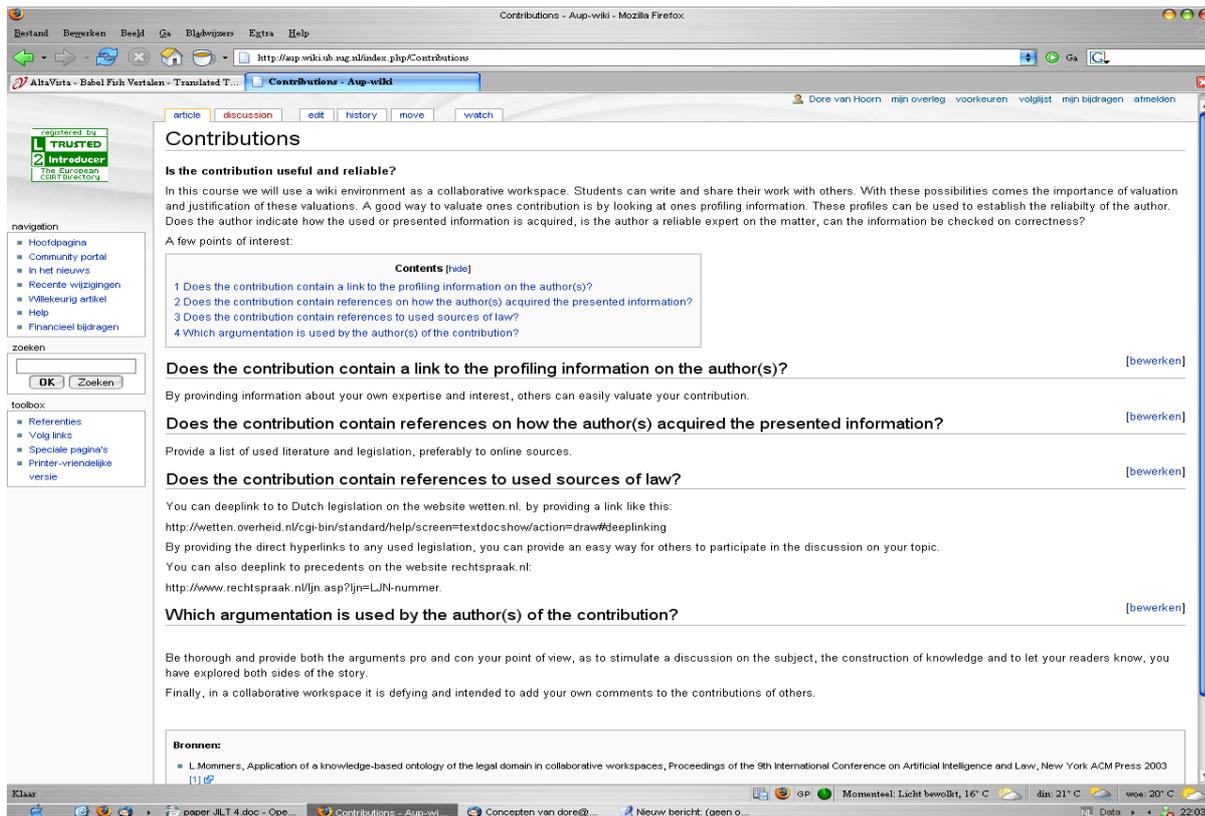


Fig 2.

We explained to the students that they were expected to take up all the necessary roles to enable collaboration in the wiki. With a short explanation we shifted the responsibility to the students stating that in the end they had to be able to provide proof of the way they performed the role of moderator, theorist, resource finder and constructor. During the course the students edited the wiki. They added pages with tips and tricks, they imported symbols, such as thumbs up from Wikipedia, and applied categories to their pages. Since we considered that commentary on legislation and case law would give further structure, the student-assistant developed a model commentary page on one of the relevant articles of the Criminal Code (Fig.3, in Dutch).

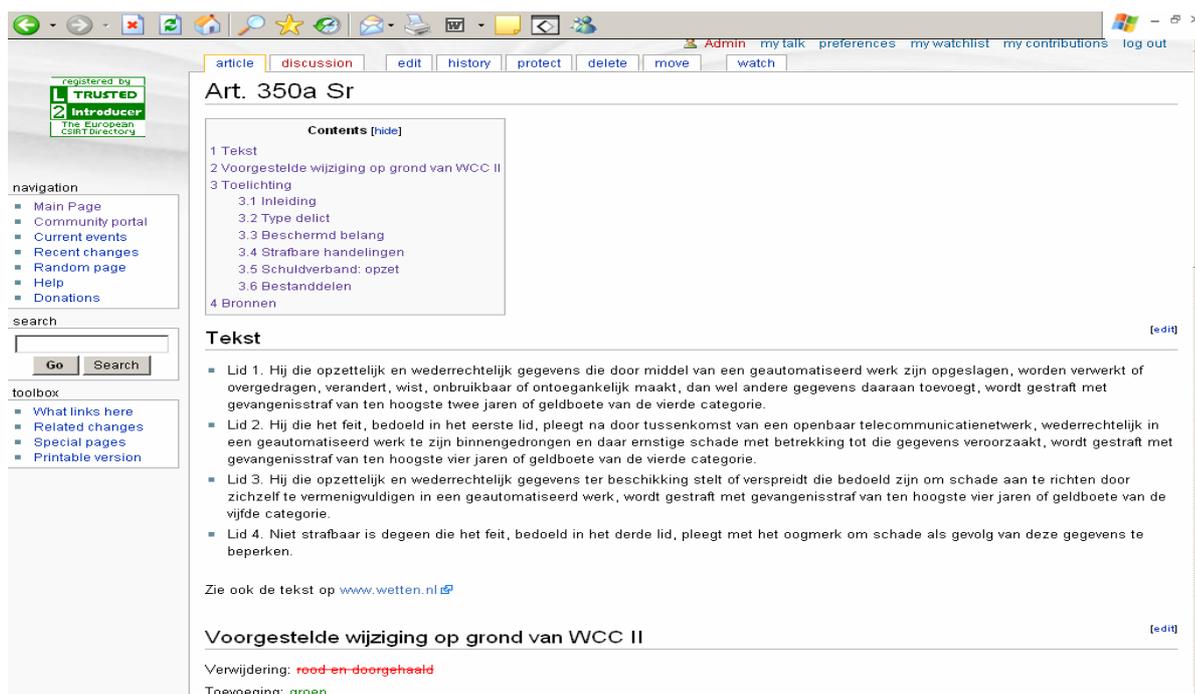


Fig 3.

There was no real adoption of the use of this structure. This was probably because the students were primarily focussed on presenting their own research and had limited time. Comments from the security manager also indicate that for outsiders the structure of the wiki was unclear. This point will need more attention in the further elaboration of future use of the wiki. 14

REFLECTION ON THE FIRST EXPERIENCES

In an attempt to reflect on the first experiences we found a practical article for the design of computer supported online learning (Rusman and Brand-Gruwel, 2006, pp. 17-25). The model distinguishes the design of knowledge construction and the design of group processes. It is easy to observe that the wiki stimulates the group processes. The students took their own responsibility and they had more interest in the work of others. They communicated in an open and respectful manner. In the evaluation they were positive about the course and the opportunities to gain experience in research. Several students even reported that they discussed awareness about the Acceptable Use Policy outside the class with other students as a form of informal empirical research. 15

The more complicated issue is that of the teacher's role in knowledge construction. Laurillard (Laurillard, 2002) recommends a conversational framework for effective use of learning technologies. In this framework participation in the scholarly discussion should be what students and educators strive for. The teacher provides authentic tasks and organises the feedback. But what forms of feedback are most effective? The wiki made it easier to organise feedback from outsiders, such as the members of the security group in our project. It was possible to give quick comments on the work of the students. Students could be stimulated to read the work of the others and learn from the feedback on their work. In some instances however it seemed appropriate to inform on the progress of a student in a face to face situation. 16

Another issue concerns the extent to which knowledge construction is effective when students are responsible for the structure of the wiki. Leuf and Cunningham (2001, p 353) report that in CoWeb, a collaborative authoring project, an organisational solution was chosen to solve the problem that the structure of the wiki becomes unclear. One or more students are tasked to take up the role of the central user. In this role they manage the meta-concept of the structure. This could be compared to the role of the editors of the ordinary Wikipedia, who prevent vandalism and misuse of Wikipedia. In our first experiment this role remained underdeveloped. According to the students, this was also the consequence of a lack of time. 17

On the whole we experienced that the process of collaboration has its own pace. For instance when the students submitted their research plans, some were worried by the overlap between the proposals. 18

From the educational perspective we welcomed this overlap, but the students found it difficult to agree upon the definitions of their responsibilities. The course was evaluated by a questionnaire and an evaluation-meeting. Students found that the use of the wiki and the assignments supported their research. The use of a wiki-environment raised their awareness on the availability, quality and relevance of the recourses they used. The innovative approach lead to more contact between the students, though the students mentioned that they would welcome a more structured approach to give feedback on the work of other students. We think that it might be more effective to limit the free choice in the topics of research and to consider a further elaboration of tasks and roles. For this the project can draw upon the experiences with collaboration in the Wikipedia project and on insights of educationalists.

Benkler gives an analysis of the peer collaboration in Wikipedia. The succes of organisational and technical architectures depends on their capacity to harbour a diversity of contributions (Benkler, 2006, p.100). For educational use this diversity can spring from different fields of expertise, interest and learning goals. In our view tasks should be developed in such a way that each student can contribute autonomously, while at the same time parts of the contribution are modular components of the representation of legislation, case law or the scholarly discussion. Less time consuming, fine grained, contributions, such as giving feedback or adding hyperlinks, should also be rewarded in the mark for this course. On the whole the collaboration should foster social norms on ways of sharing knowledge that should be relevant for the legal practitioner. 19

Educational scientists (Dillenbourg, 2002, Notari, 2006) explain that next to collaboration an appropriate script is important for effective learning in a wiki-environment. A collaboration script requires five attributes: 20

- the task that students have to perform,
- the composition of the group,
- the way that the task is distributed within and among groups,
- the mode of interaction and
- the timing of the phases.

In the wiki environment, involving learners in making comments about the contributions of other learners helps them to construct personal knowlegde and enhances meta-cognitive capacities. Notari notices that it is often difficult to get learners involved in the work of others. Therefore she recommends the development of a `communication and comment culture` right from the beginning. She explains that comparing, commenting and complementation of other inputs is important also because it has a self evaluation effect. How to link inputs should be negotiated among learners. 21

In our first approach the students were in fact so focussed on the local circumstances, that they limited their scope to compliance with the Dutch legal structure. The wider context of globalisation and the effects of harmonisation of legislation in the Cybercrime convention remained beyond their horizon. This is probably because students find comparative legal analysis difficult to perform. Yet, at the lower level of regulation a comparative approach was broadly used. The students googled for other Acceptable Use Policies and they pick-up ideas from these resources with great ease. Moving on to collaborate internationally without face-to-face contact; we need to start from a clear common ground (Schafer, 2000). Building on the structure of the Cybercrime Convention might prove effective. In this it is possible to build on the experiences with a computer crime law survey (Koops, Lichtenstein, and de Hert, 2004) (bold text as hyperlink: <<http://ccls.law.uvt.nl/>>). 22

WORKING TOWARDS A MULTI-LOCAL AND EVENTUALLY OPEN COLLABORATION

A next step for the use of a wiki-environment can also be a next step in forming a community of practice to learn about the need in legal education, and our own need, to gradually move more to the risk zones of using ICT in legal education. It would be good if the next step could involve international collaboration. In the design phase, collaborating educators should set clear goals on the results they want to achieve. Actually this can probably be best formulated in desired results to be shared in an open wiki-environment in the end. An example of an early initiative to this end is JurisPedia (please make url of bold text: http://en.jurispedia.org/index.php/Main_Page) , an open encyclopaedic project of academic initiative for sharing law. In the background to this endeavour to start up a multi-lingual 23

collaborative legal encyclopaedia is the idea that a network of connected individuals is as important to legal knowledge on the Internet as the legal information itself. The project is to be supported by universities, who can build upon existing knowledge on quality and structuring and presenting legal information. The open wiki-environment of JurisPedia in the first place aims at collaboration between legal scholars and practitioners, but in the open environment also the general public can read the information and ask a question. It is clearly stated that the wiki-environment is no substitution for individual legal advice.

In the present semester of 2007 we choose to do a pilot to prepare the Dutch students to enter into collaboration with students from Glasgow Caledonian University. On the advice of some of the students we work with a half open wiki-environment. The result of this work-in-progress is visible to the world in the Cybercrime wiki (<http://int.wiki.ub.rug.nl/>). Only students with an account can edit the pages. The first assignments were done in the closed Blackboard environment. We decided to introduce the students to the main goal of their collaboration by questions on an article about the need for transparency on national `checks and balances` in a globalising environment. The students were encouraged to validate the expertise of the author by visiting his website and performing a keyword search there. Further they were asked to formulate their own opinion on harmonisation. In pairs one student gave feedback on the work of one other student. The next assignment was to prepare a userpage describing their own fields of interest and learning goals. For this the students visited the site with the course description of the course at Glasgow Caledonian. The group presently consist of sixteen members. We developed four scenarios in which each student will give advice to a virtual client related to a case about a leaked slanderous email. The students now published their research plan in the wiki. To our surprise most students welcomed the chance to write in English. With the help of a student digital television initiative at our institution, also featuring in one of the scenarios, we made a new-item to introduce the wiki to the Scottish students. 24

A CASE FOR COLLABORATION

Suppose: Somewhere between Groningen, Glasgow or any other place in the world an e-mail leaks. A copy of the e-mail, written by professor A containing slanderous facts about professor B, appears on a website of students of the university of Groningen, Glasgow or any other city in the world. 25

Questions to be explored: 26

Is the university or the public prosecutor entitled to demand the removal of the page?

What criminal offences under Dutch/Scottish or any other legal system can be involved?

Does publication of the e-mail constitute an offence under copyright law?

What articles of the Cybercrime Convention can be relevant in this case?

Would things be different if the e-mail had been encrypted?

What would be a good policy to regulate privacy and handling of e-mail traffic within the institution?

The fact that regulation of Cybercrime is harmonised at a global level, offers a common structure to engage in a comparative approach. But the use of a wiki can also extend to other fields. Moreover, as we will explore in the next paragraph, a wiki-environment can provide a general instrument for the development of professional skills. 27

BROADER APPLICATION OF A WIKI IN LEGAL EDUCATION

Can the medium of a wiki be relevant for the perceived needs in the development of skills for the legal profession? Students should exercise creative writing and decision making skills aimed at a service oriented profession. Although the need for more active involvement of students to develop academic and professional skills in Dutch legal education is broadly acknowledged, it is difficult to get this organised in the present form of mass-education. An educator preparing students for the profession signals the detrimental effect of this lack of practice with independent research (Vermeer, 2006, p.167). Grading individual research papers is labor intensive. A possible method of providing more feedback identified by a research project experimenting with wikis and weblogs in the field of design engineering (Chen a.o., 2005) is that feedback via conversation is more feasible than written feedback. In the wiki-environment quick feedback is feasible. With the use of a wiki students are invited to build 28

on each other's work and to discuss ameliorations through the 'talk' pages. ICT is used in a way that is student-centred. The wiki facilitates writing as a process rather than as an individual effort to make a product meant for the eyes of the teacher only (Lamb, 2004). The possibilities for monitoring the writing process will discourage plagiarism. A further role of the teacher can be to demonstrate an experienced approach of involvement in research of law. Also the students can learn also by imitating traditional forms of legal publications, like commentaries to legislation or jurisprudence.

Legal professionals need to be demand-oriented. 'It appears that victims in this world in the first place have a great need on forms of guidance that are not purely legal. First care, familiarization with the legal matters, support in negotiations and coaching is needed too...These are leads to work more demand driven (Barendrecht, 2006, pp. 14-15).' There is evidence in the development of the skills of reading law that students who internalise the purpose of helping a client, develop more effective reading skills. The need to communicate their own opinions on a case can support this (Christensen, 2006). The final purpose of contributing to an open wikipedia-like encyclopedia on law would make them feel a genuine responsibility towards the general public. When students are encouraged to publish their findings in an open wiki, they will feel an authentic responsibility to present the information in a way that is well ordered, well grounded and understandable for lay people. A gradual, thoughtful development of quality standards for such Open Content calls for involvement from the academic world. This type of research (Mommers, 2003; Schafer, 2000) can profit from the knowledge on structure and validation of information from the library environment. 29

For the notary's practice a warning comes that the use of ICT in the present legal practices threatens the creativity needed for legal decision-making. 'In my eyes the large scale processing of fixed text-blocks by ICT-applications gives considerable risks: it leads to laziness to think and fear to thread off beaten tracks (Hidma, 2006, p. 59).' We notice the first experiments with the use of wikis for knowledge management in large law firms. To adapt new web-based collaborative authoring tools, like the wiki, to the needs of legal scholarship demands a collaborative creativity of students, teachers and professionals. Overall we can conclude that this collaboration can possibly be instrumental to the development of intellectual and personal skills relevant for the legal profession. This form of collaboration opens up safe, new fields for law students to learn by contribution to the public good. The U.S. scholars Benkler and Nissenbaum illuminate that peer-production as an emerging system of production in the digital environment offers an opportunity for people to engage in practices that permit them to exhibit and experience virtuous behavior. 30

'The important point is that Wikipedia requires much more than mere mechanical cooperation among participants. It requires a commitment to a particular approach to conceiving of one's task, and a style of writing and describing concepts, that are far from intuitive or natural. It requires self-discipline. It enforces the behaviour it requires primarily through appeal to the common enterprise in which the participants are engaged coupled with a thoroughly transparent platform that faithfully records and renders all individual interventions in the common project, and facilitates discourse among participants about how their contributions do, or do not, contribute to this common enterprise. This combination of an explicit statement of common purpose, transparency, discourse, and the ability of participants to identify each other's actions and counteract them—that is, edit out "bad" or "faithless" definitions—seem to have succeeded in keeping this community from devolving into inefficacy or worse (Benkler and Nissenbaum, 2006).' 31

Engagement in a wiki-environment adapted to legal scholarship can satisfy the demand for the next generation of legal professionals that can think creatively and act in a morally responsible way. 32

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