



October 9, 2006

Mr. Michael Chasen
Chief Executive Officer
Blackboard, Inc.
1899 L Street, 11th Floor
Washington, DC 20036

Dear Mr. Chasen,

I am writing you on behalf of the higher education IT community, the EDUCAUSE Board of Directors, and our executive team to express in writing what we have conveyed in prior conversations. Our community is deeply concerned by Blackboard's patent and its recent law suit claiming patent infringement against Desire2Learn. Our community feels these actions go beyond competition to challenging the core values and interests of higher education.

One of our concerns is that you may not fully appreciate the depth of the consternation this action has caused for key members of our community. Among those who have been most directly involved in the development and evolution of course management systems—customers whom Blackboard has relied upon for ideas and advice—these concerns are most pronounced. Their anger over the law suit is so intense that many are simply not communicating with Blackboard. We have seen this intensity of anger only a few times before. In those cases, the corporations involved were unaware of what was happening outside their official channels. Please do not underestimate this consternation which we believe will impact Blackboard in both the short- and the long-term.

We are sure you are aware of the many blog postings discussing the law suit. Web sites have been established to gather evidence of prior art to refute the patent claims. The expressions we hear range from the vilification of Blackboard, to stories about the cold reception Blackboard is receiving at presentations, to the embarrassment of your employees who are asked to explain this corporate action. Even those members of the community who counsel taking a wait-and-see approach are not necessarily less concerned, just more focused on what they might have to lose by speaking out against the dominant vendor in the CMS market. The fact that these perceptions exist is not likely to lead to greater market share or profitability for Blackboard.

EDUCAUSE is a non-profit association dedicated to serving its 2000 college and university members, as well as its 200 corporate members. We do not endorse products or take the side of one company over another. Our corporate guidelines, established in 1998, are very clear that EDUCAUSE is primarily accountable to its institutional members. In the event of a conflict between corporate and institutional member objectives, we must support our institutional members. Let me clearly state that we are not siding with Desire2Learn at the expense of Blackboard. Our



discussions and actions are based solely on the collective interests of our institutional members.

There are two core tenets behind the community concern. One deals with co-creation and ownership; the other deals with innovation. Course management systems were developed by the higher education community, which includes academics, organizations, and corporations. Ideas were freely exchanged, prototypes developed, and refinements continue to be made. The new EDUCAUSE Catalyst Award, given to course management systems this year, celebrates that course management systems "were conceived and developed among faculty in pockets of innovation throughout the world. They originated simultaneously at a number of institutions," as stated in the award announcement. One of the reasons course management systems were singled out for this award is because of the "fluid movement of ideas and initiatives between academia and the commercial sector as individual limited-use efforts evolved into enterprise-wide systems." Our community has participated in the creation of course management systems. A claim that implies this community creation can be patented by one organization is anathema to our culture.

We realize that what one believes is not necessarily legally binding. As a result, EDUCAUSE engaged the services of a highly reputable, independent law firm to review the patent. The preliminary conclusion is that the patent was very broadly defined and was inappropriately approved by the U.S. Patent and Trademark Office. That is certainly the view of the higher education community, many of whom are contributing evidence of prior art.

The other core tenet is to promote innovation. The free exchange of ideas fosters innovation. The open sharing of ideas does not preclude commercialization or profiting from ideas. Innovation is critical to the higher education community and it is critical to corporations. Blackboard has espoused the importance of listening to customers as its source of innovation. This law suit will certainly have a chilling effect on the open sharing of ideas in our community.

We believe that Blackboard should disclaim the rights established under your recently-awarded patent, placing the patent in the public domain and withdrawing the claim of infringement against Desire2Learn. We believe this action would be in the best business interests of Blackboard and in the best interests of higher education. We do not make this request lightly or underestimate the courage it will take to implement. However, we believe it is the right action for your corporation and our community.

As EDUCAUSE members convene this week, this patent and its implications for innovation in education will be discussed more broadly. Now is the time for Blackboard to demonstrate why it is a leader in course management systems and listen to the marketplace that has been a primary source of collaboration and innovation. I, along with members of my executive team, are willing to meet with you at any time.



Sincerely,

Brian L. Hawkins
President
EDUCAUSE

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