



September 7, 2006

Colleagues:

As you are all aware, important events are occurring in the course management systems marketplace. This year, Blackboard was awarded a patent for intellectual property contained within its course management system and then filed a lawsuit against Desire2Learn for infringement of newly established rights under this patent. This action has lit up blogs and listservs, and we at EDUCAUSE have received a large number of inquiries about what the association plans to do.

Like all of you, EDUCAUSE is concerned about the vitality of the supplier marketplace for tools and solutions that are essential to higher education. And, like you, EDUCAUSE is deeply concerned that laws and regulations recognize both the rights of intellectual property (IP) holders (our universities are significant producers of IP) and the incentives to invest in innovation. Our positions on advanced networking, CALEA, and Net Neutrality are just three examples where we have worked hard and well to promote and protect innovation in information technology.

With respect to the issues of course management systems, we have been actively engaged in conducting necessary due diligence; that is, we are trying to understand the situation so that we can educate our members and, if appropriate, establish an advocacy position. We at EDUCAUSE have consciously avoided any public statement about a position *per se*, as we do not yet have the information base and legal research to make any statement. However, because of the strong interest in the community, we feel it is important to let you know what EDUCAUSE has been doing in this arena.

- We have discussed this situation at length with the EDUCAUSE Board of Directors and will continue to do so.
- In early August, EDUCAUSE retained legal counsel to inform and advise us concerning the Blackboard patent and the history surrounding it. We will make pertinent information available to the community and take actions that we believe are in the best interests of the community.
- We have been consulting actively with leaders from the community to gather viewpoints on this matter and to keep our fingers on the pulse of the community.
- We have worked with the CIO Constituent Group chair, Theresa Rowe, to plan and deliver a discussion panel on software patents, the thinning software market, and related subjects at EDUCAUSE 2006 in Dallas. The incoming and outgoing chairs of the Recognition Committee (which selected course management systems to receive the first Catalyst Award <<http://www.educause.edu/2006/10958>> at the conference), Polley McClure of Cornell University and David Lassner of the University of



Hawaii, will participate on this panel along with Johns Hopkins University attorney Wes Blakeslee, who helped the higher education community respond to the Acacia situation. EDUCAUSE Vice President Richard Katz will moderate this panel, which will be held as part of the CIO Constituent Group meeting (open to all), from 2:45 – 4:00 p.m. on Monday, October 9, 2006, in Ballroom A-Two of the Dallas Convention Center.

- We have charged Mark Luker and the EDUCAUSE policy staff of our Washington office to carefully monitor the current patent reform legislation under discussion in Congress and to keep the EDUCAUSE Network Policy Council and the community informed on these issues.
- We have begun development of an EDUCAUSE statement on “educational patents” that we hope to have prepared in time for consideration by the EDUCAUSE Board of Directors at its October meeting. This subject is, of course, very complex for all of us in higher education, as we are both patent holders and consumers of patented products. At the same time, we are creatures of the colleges and universities within which we work, whose very essence is about the creation and dissemination of intellectual property and respect for the creators of such property when clear evidence of their original innovation is present.

As always, we have an obligation to our members to develop a sound and balanced position that appropriately advocates for our membership and is harmonized first within our IT community and ultimately among higher education leaders through organizations like the American Council on Education. Along the way, we will share with you what we learn via our resource pages, EDUCAUSE Connect, Washington Update, and other conventional EDUCAUSE channels. As information develops on this topic, we will be sure to schedule time for members to hear from experts and to discuss the matter at EDUCAUSE events.

We at EDUCAUSE are eager to see you in Dallas and thank you, as always, for your continued support. If you have ideas about how we can best further our educational and advocacy objectives in this specific domain, please write to us at patents@edUCAUSE.edu.

Sincerely,

A handwritten signature in black ink that reads "Brian L. Hawkins".

Brian L. Hawkins
President