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Blackboard, D2L declare legal truce

Course management companies end back-and-forth lawsuits that roiled many in higher education

By Dennis Carter, Assistant Editor

Primary Topic Channel: [Litigation](#) , [Copyright](#)

The three-and-a-half-year court battle between learning management system (LMS) giant Blackboard Inc. and competitor Desire2Learn ended Dec. 15 when the companies agreed to license each other's patents and drop long-standing lawsuits. But some observers believe the truce comes too late to stem the growing movement toward open LMS technologies in higher education.

The protracted legal clash began in 2006 when Blackboard--the market's No. 1 commercial LMS--received a patent for online learning systems widely considered to be too broad.

Blackboard sued its biggest rival, Desire2Learn, for patent infringement, and the companies went back and forth until last July, when a federal appeals court voided part of the Blackboard patent.

Financial details were not disclosed by either company. Both companies make LMS software that helps educators log student grades, conduct web-based class discussions, and distribute class material.

"We are pleased to have resolved our differences with Desire2Learn," said Michael Chasen, president and CEO of Blackboard. "Bringing this matter to resolution is in the best interests of both of our organizations, our respective clients, and the broader education community."

Campus technology experts said they were relieved that Blackboard's patent did not stand in court, but many added that the sometimes-ugly court fight might have harmed the images of both companies among college IT decision makers.

"They realized that lawsuits are hampering both of them ... and hopefully they've realized they have to put that behind them," said John Orlando, program director for information assurance and business continuity at Norwich University in Northfield, Vt. "It's a way of them getting on with it and improving their products."

In the years since Blackboard and Ontario-based Desire2Learn filed their lawsuits, educators said, open-source learning system models that incorporate Web 2.0 tools like wikis and blogs have become a viable alternative to the strict corporate approach to LMS software.

Open-source LMS projects are collaborative efforts in the technology community that differ from the centralized, dependent model of campuses that use popular vendor systems.

The move away from traditional learning platforms could force market leaders like Blackboard and Desire2Learn to incorporate more Web 2.0 features in their newest products, Orlando said.

"The leaders in the [educational] technology field are embracing Web 2.0," he said. "With all the variety out there now, companies like Blackboard are probably going to be forced to make those changes."

Raymond Schroeder, director of the University of Illinois's Center for Online Learning, Research, and Services, said the settlement between Desire2Learn and Blackboard "holds far less meaning" than if the companies had come to an agreement three years ago.

The LMS landscape has changed, he said, and both companies spent millions to fight over a technology that is no longer favored by technology officials.

"The current budget situation facing everyone has colleges, universities, and school districts across the country questioning if they can continue to afford the kind of expenditures required for a commercial LMS," Schroeder said. "When a university is facing layoffs and unpaid furloughs, an expenditure of \$20,000 to \$200,000 [for a commercial LMS] is often mentioned as one place to save [money and] save jobs. Open-source systems are generating a lot of interest, as is the idea of packaging together a group of Web 2.0 technologies to replace an LMS."

Blackboard began adjusting to schools' open-source migration in the midst of its legal back-and-forth, unveiling an instant messaging service in April.

Professors and their students can discuss lesson plans and homework questions with the instant messenger's pre-populated class rosters, which provide connectivity between classmates who might be encountering the same problems in preparation for quizzes and tests. Pre-populating the IM service ensures that professors are not assigned the tedious task of collecting student IM addresses and plugging them into the course web site.

Desire2Learn's LiveRoom includes a chat function and a virtual whiteboard space that lets online tutors conduct lessons in real time. The platform also allows students and professors to download files and presentations, and it lets faculty members track attendance and create online polls.

The LMS legal fight took several contentious turns, including a motion filed by Blackboard charging that Desire2Learn was in contempt of court after Desire2Learn changed the name of its LMS product.

Desire2Learn officials said their latest course-management software, version 8.3, did not violate Blackboard's patents, adding in statement they would "defend version 8.3 vigorously."

In a July 2008 response to Blackboard's motion of contempt, Desire2Learn said: "Blackboard bases its motion on nothing more than a series of flip-flops, distractions, and misstatements."

Blackboard officials argued that, despite name changes to Desire2Learn's LMS products, their functionality had not been altered enough to satisfy requests to avoid patent violations.

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