



The Office Of The Principal and Vice - Chancellor

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PANEL DISCUSSION

ETHICAL AND LEGAL ISSUES OF LEARNING ANALYTICS: *Do we need a global framework?*

(Short summary opinion piece)

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Data analytics is the 21st Century *Orwellian* "Big Brother"¹. Every single one of us, to a greater or lesser extent, is living what I would like to call an "*e-life*" - a life that is shaped and influenced by the digitised world in which we live and move and have our being. From the moment of conception, to the moment of death (and even post mortem!) we generate a digital footprint, and leave a digital legacy that will never be eradicated, and that comprises a huge variety of data that is continuously stored, harnessed and used, in conjunction with increasingly sophisticated technology and capacity to monitor, measure, assess, (mis)inform, persuade, manipulate and entice or encourage us into decisions and behaviours, which have as their ultimate goal, control for financial efficiency or gain.

¹ Orwell, George (1949). *Nineteen Eighty-Four*. In the society that Orwell describes, every citizen is under constant surveillance by the authorities, mainly by telescreens. The people are constantly reminded of this by the slogan "Big Brother is watching you": a maxim which is ubiquitously on display. In modern culture the term "Big Brother" has entered the lexicon as a synonym for abuse of government power, particularly in respect to civil liberties often specifically related to mass surveillance. [https://en.wikipedia.org/wiki/Big_Brother_\(Nineteen_Eighty-Four\)](https://en.wikipedia.org/wiki/Big_Brother_(Nineteen_Eighty-Four))

Open Distance and eLearning, with its reliance on technology for its efficient and effective administration and delivery; its (potentially) massive numbers of students, and its vast repositories of knowledge, provides a natural “home” for learning analytics. The following definition of learning analytics provides a useful basis for the context of my discussion. *“Learning analytics refers to the measurement, collection, analysis and reporting of data about the progress of learners and the contexts in which learning takes place”²*.

On the one hand, learning analytics offer very real prospects of improvements in institutional management and operation and in the quality of the students’ learning experience and the courses/qualifications that are offered. There are also genuine opportunities for staff development, and more efficient leadership and management. All of these (which are but a few examples of improvements that can be effected by the intelligent mining of data) can undoubtedly result in more efficient institutions and a better qualified and more relevant calibre of students and staff.

On the other hand, the propagandist phenomenon of “fake news” and “post-truth” and the external storage, locus of control and monopoly of virtually all of the data that is generated, including in higher education (i.e., in the “North”) is a growing cause for concern, offering a glimpse of the massive potential and power of data to blur and distort the lines of truth, to be used for unethical purposes and to wield power – at the individual, national, continental and global levels. This raises genuine concerns about the rights of the individual in the murky world of big data. Users are compelled via user agreements to sign away many personal rights to their own information – or be denied access.

This practice extends to our universities, compelling all ethical higher education practitioners to ask themselves how the data to which we have access can be used in an ethical and transparent manner. It is extremely unlikely that there can be a collective global legal remedy for the personal protection of information, given the disparate national legal frameworks. Regional agreements such as those between Europe and the USA are more feasible. What is more necessary and viable, I believe is a collective accord and commitment to transparency about what we collect from our students and for what purposes, supported by an unambiguous agreement on recourse to action for the student where they feel that their data may have been misused or used unethically. We also need to ask students how the data which we gather can be used to their benefit. Students need to be consulted on what data analyses they need (for example, on their personal performance or areas of weakness). It is probable that higher education institutions will increasingly be faced with the reality of a moral obligation to act – given the vast amounts of data on their students - failing which we will run the risk of legal action for not advising students when we clearly have the wherewithal to do so, of analyses that suggest that a given intervention or course of action would be prudent and in their best interest.

This discussion is timely and one trusts that it will contribute to a very necessary global framework on the *ethical and legal issues of learning analytics* for higher education practitioners.

² (<https://www.jisc.ac.uk/reports/learning-analytics-in-higher-education> definition of learning analytics: