CHALLENGING THE CORPORATE UNIVERSITY

Have law and policy reaffirmed or reshaped the University’s mission?

by

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“This is a corporation, not a social entity. Coming here is not a rite of passage. We are not trying to develop their value systems or go for that ‘expand their minds’ bull----.” JOHN SPERLING, CHAIRMAN AND CEO, APOLLO GROUP PARENT OF THE UNIVERSITY OF PHOENIX.

“We’ve got a lot of problems in higher education: exorbitant tuition, tenure, foolish research, bloated bureaucracies, low admissions and graduation standards, too much remediation, too many programs, light teaching loads, lack of accountability, narrow-minded faculty unions, and shared governance that leaves nobody in charge. Change will come as parents, students, taxpayers and elected officials learn more about what really goes on behind the ivy-covered walls.” JAMES F. CARLIN, PAST CHAIRMAN OF THE MASSACHUSETTS BOARD OF HIGHER EDUCATION AND FORMER TRUSTEE OF THE UNIVERSITY OF MASSACHUSETTS.

“The worth of a State, in the long run, is the worth of the individuals composing it; and a State which postpones the interests of their mental expansion and elevation, to a little more of administrative skill or that semblance of it which practice gives, in the details of business; a State, which dwarfs its men, in order they may be more docile instruments in its hands even for beneficial purposes, will find that with small men no great thing can really be accomplished; and that the perfection of machinery to which it has sacrificed everything, will in the end avail it nothing, for want of the vital power which, in order that the machine might work more smoothly, it has preferred to banish.” JOHN STUART MILL.

“None of these rivals is as powerful as we think. Most concentrate on product marketing and course delivery; curricula and content they see as simply part of a supply chain. They also concentrate on the narrow range of subjects that can survive this reductionist treatment: management, IT and such like. None is serious about research or scholarship....Anyone who has bothered to find out about the University of Phoenix knows that it does not represent a serious challenge to public higher education systems, still less to traditional universities.” PETER
Traditional universities in higher education face daunting questions in their struggle with an uncertain economy and continuing charges, particularly from the business community, that they need to be more efficient and accountable. Trustees, who tend to be drawn from business and professions such as law and medicine, often struggle with unfamiliar concepts of tenure, shared governance and the absence of a profit motive. Students and their parents fear they will never be able to meet the meteoric increases in tuition and fees. Donors insist that their contributions be used for purposes that mirror their own interests, which are not always among the highest priorities of the institution.

These are not new questions. The issue of change has become a worn refrain in the rhetoric of university presidents, especially those who are newly appointed. However, changes have largely been cosmetic. Traditional universities continue to maintain their classroom/lecture/credit hour/graduation format with gargantuan libraries stocked with many obscure and archaic books and journals. They view their competitors largely in terms of institutions that are most like themselves and treat the latest rankings from *U.S. News and World Report* as gospel. Most are structured as non-profit, tax-exempt entities, which is antithetical to development of a profit motive.

Persons associated with traditional universities often take a patronizing view toward the entities engaged in technologically centered education. Some follow Mark Twain’s lead about reports of his death, and cynically observe that comments about the demise of traditional universities are premature and wildly exaggerated. They contend that their universities have already incorporated many of the prime characteristics of corporate universities by making significant investments and arrangements of the use of technology in such areas as admissions, accounting systems, configured e-mail systems, distance learning, and scientific research. In fact, administrators of traditional universities are beset by critics such as David Noble and Ralph Nader, who have authored venomous attacks on the traditional universities for subordinating
their historical mission of providing a liberal education to the pursuit of profits and an allegiance to technology.  

Others resort to diatribe, belittling corporate universities and viewing them as little more than trade schools that incorporate the term “university” not to express their nature, but to gain credibility. They also dismiss them as shallow entities with a narrow curriculum that either seek to provide training to suit their own personnel needs or to prepare individuals for performing specific skills, primarily related to business, that are needed for obtaining employment or advancement. To those that hold this view, the corporate universities pose no threats to traditional universities that have missions that revolve around teaching, research and service and embrace a mission of providing not only knowledge to a student, but a means for living a principled life.

However, during the last twenty years, a new paradigm has been evolving that may pose challenges to maintenance of the traditional manner in which laws and policies are administered by institutions of higher education. This paradigm is centered on greater and better use of technology for delivery of instruction, emphasis on learning instead of teaching, lifetime education, internationalization of admissions and academic programs and the introduction of “academic capitalism.”

Some business and educational observers assert that the unwillingness of universities to embrace elements of this paradigm will result in an Armageddon for the traditional universities and “corporate universities” operated as for-profit enterprises. In an interview published in Forbes Magazine, Peter Drucker, the eminent futurist and business analyst, suggested that use of technology foreshadows the death of universities. He went on to state that “Thirty years from now the big university campuses will be relics,” and “It’s as large a change as when we first got the printed book.”

A recent report prepared by the Futures Project echoes Drucker’s reasoning, noting that presidents and other officials of traditional universities are particularly alarmed by the threat of
heightened competition from traditional and nontraditional competitors. The report noted that “What really scares many of our respondents is the fear that other competitors will cherry-pick by offering programs for the most profitable markets. Because they are free of many of the high-cost functions of traditional universities (e.g., research, financial aid, student services) the new rivals can compete much more aggressively in these markets. While the new competitors skim off the profitable programs, the fear is that public institutions will be left only with the least profitable operations.”

An article by Betty Leydon, Vice Provost for Information Technology and CIO for Duke University, suggests that online learning and other types of online products and services could be viewed as a “disruptive technologies,” a term originated by Harvard Business School Professor Clayton Christenson. She explains that such technologies, which are the “mainstream” of most corporate educators, could be “devalued by ‘mainstream’ students at residential colleges and by ‘mainstream’ faculty and administrators reared on the commonplaces of face-to-face classroom learning.” She concludes, “if mainstream students don’t ask for online learning, traditional higher education institutions will be tempted to ignore it as irrelevant. However, if institutions do ignore it, Christensen would warn, they could soon find themselves out of business as new differential advantages are created and the heart of the market begins to shift. At some point, he would argue, the technology that enables online learning will improve to the point that virtual classrooms will reach the minimally acceptable level of mainstream students. At this point, students may decide they don’t need the super-high-quality, expensive education at a residential college; they may begin to make decisions based on convenience and price. Caught napping, the conservative colleges and universities will be unable to move fast enough to develop new products or capture new markets made possible by the disruptive technologies.”

Are these forecasts, criticisms and analyses and criticisms valid? Do corporate universities really pose a threat to the survival of higher education as we know it? Will they surprise traditional universities by unsuspected appropriation of their gatekeeper roles while they doze in denial at the electronic switch? On the other hand, do they possess valuable wisdom that can be cultivated by institutions that are willing learners? Will one be Jonah and the other the
Use of the term “corporate university” has been criticized and trivialized by two authors as being an “oxymoron,” suggesting this label is inherently contradictory. Actually, a better term would be “misnomer” because entities that are called corporate universities are not necessarily formed as corporations, nor do they meet the definition of a university, which refers to an education of the “highest level” with one of more undergraduate colleges, graduate programs and the authority to confer various degrees. It is unlikely that any entity that is referred to as a “corporate university” would be so pretentious as to deem itself as providing education at the “highest level.”

For purposes of this narrative, traditional universities are deemed to be those conventional post-secondary institutions in the United States, public and private, that maintain campuses with buildings and other facilities; offer classroom instruction without a majority of its academic programs being transmitted by electronic means; confer undergraduate and graduate degrees in several different disciplines; pursue missions involving discovery, integration, evaluation, and preservation of knowledge in all forms; follow commitments to service and leadership in society; and often field a football team.

Since the term “corporate university” lacks substance and is devoid of real meaning, entities that are commonly given this label will in the remainder of this narrative be called “commercial educators.” Obviously, none of the businesses that identify themselves as “corporate universities” will employ such a description because “corporate university” has more value for marketing.

Many of the books about commercial education lack depth and have limited supportive documentation. They are often produced by persons with an interest in commercial education, which diminishes their objectivity and credibility. Portions of these works even resemble self-help wealth books with discussions of how a person can start his/her own “corporate university.”
A reviewer of one of the prominent books in this area identified it as an “infomercial.” Yet, these books do provide an informative summary of the nuts and bolts of commercial education.

Among the key attributes of commercial education are that it is private, relies chiefly on e-mail and other electronic forms of communication for course delivery, espouses a commitment to lifetime learning, has part-time faculty largely comprised of active professionals whose work relates to the courses they teach, and has a high degree of utility in enabling companies to train their own employees and personnel of other businesses, which often leads to a direct monetary profit. Commercial education is basically aimed at helping people get better equipped and credentialed in specific skills to meet needs and demands in the job market.

Although much grandiosity and hyperbole is used in describing the role of commercial educators, particularly in the discussion of threats they pose to traditional universities, an examination of their promotional materials reveal that most of them are devoted to providing information and training to persons who either have limited education, if any, from traditional universities or find that the education they have received has not adequately prepared them for the employment they seek. Moreover, even individuals who have strong educational and employment backgrounds sometimes find it necessary to upgrade their skills because of changes in job requirements, particularly those relating to technology.

Too often, valid and respectable companies engaged in corporate education, such as those examined in this narrative, are improperly lumped with borderline and vacuous businesses such as diploma mills and enterprises that are unable or unwilling to meet extravagant promises they make in advertising. Last year, usnews.com, an online affiliate of U.S. News & World Report, published an article captioned “Buyer, be wary”, subtitled, “A good deal on a distance degree may not be a good value,” which included a cautionary discussion concerning individuals who had lost substantial sums of money after enrolling in educational ventures that required “real work,” but lacked necessary academic credentials or legal authority to grant degrees.
Prominent and reputable companies that are frequently identified as leaders in commercial education are Motorola, Anheuser-Busch, McDonald’s, Disney, Dell, and Mastercard. For example, McDonald’s Hamburger University not only instructs new employees on how to prepare its fast food products but prepares them to take management positions in its franchised operations. Yet, the web sites of these companies disclose that provision of commercial education is secondary to promotion of their own business interests. The education offered by Motorola, Anheuser-Busch, and Dell involve employee training. Disney University has a close tie-in with conferences held near Disneyland, and Mastercard provides instruction on financial services and personal money management.

Who then are the commercial education providers that are the subject of so much publicity about challenges or threats to traditional universities? Only a handful of companies that have qualified for accreditation and are not affiliated with traditional universities warrant discussion in this narrative. The University of Phoenix (“Phoenix”) heads the list, which includes DeVry Institute of Technology (“DeVry”), Jones International University (“Jones”), and ITT Education Services, Inc. (“ITT”). The academic programs offered by Jones by video indirectly serve its primary objective of owning and operating cable television systems. All confer bachelor’s degrees and all except ITT confer advanced degrees. The curriculum of these institutions primarily involves various aspects of business and other technical areas although Phoenix also has a nursing program.

Almost fifteen million students are enrolled in either two-year or four year programs of public and private colleges and universities in the United States. Greg Capell, a senior research analyst at Credit Suisse First Boston, estimates that commercial education has less than a 3% share of total spending for higher education, of about $250 to $270 billion, up from about 1% five years ago. He also notes that charges in commercial education are increasing about 5% each year. In addition, he suggests that seasoned entities, which have been owned for five years or more, are deriving 6% to 8% per year in enrollment growth.
The largest and most successful of the providers of commercial education operates through the “University of Phoenix“ (providing distance education) and the “University of Phoenix Online” (offering electronic instruction). A student must be at least twenty-three years of age, have a high school diploma or equivalent and be employed to be admitted by Phoenix. If not employed, a student must have access to an organizational environment that allows application of concepts learned in class. About 60% of enrolled students get tuition assistance from employers.

An article in Forbes Magazine in 1997 focused on Phoenix’s costs of $237 per credit hour as compared with $486 an hour incurred by Arizona State. Phoenix contended that it was able to provide its services at a much lower cost than Arizona State because it paid its on-line faculty only $2000 a course or $46 per credit hour in salary and benefits while Arizona State was paying its faculty, teaching from a standardized curriculum, an average of $67,000 annually.

With 133,700 enrolled students in its instructional programs, Phoenix has demonstrated that its role in the higher education marketplace should be given attention. The University of Phoenix provides distance learning to 84,300 enrolled students and the University of Phoenix Online provides electronic education to 49,400 enrolled students. Distance learning is carried out through forty campuses and eighty learning centers in more than twenty-five states, most of which are located in the West, Midwest and Southwest regions of the United States.

However, even more important and dramatic is the extent to which Phoenix has found a way to provide higher education to a large number of students and yet generate great profits. The gold mine of Phoenix appears in its financial statements. In its Annual Report for the Fiscal Year ended August 31, 2002, Apollo Group, Inc., the parent company of Phoenix, reported revenues of more than $1 billion, an increase of 31% over its revenues from the prior fiscal year, and a net income of $161.2 million, a 50% increase in net profits from the last fiscal year. Moreover, Apollo’s Education Group realized a net income of $153.2 million and Phoenix Online earned a net income of $64.4 million. From January through the end of November in
2002, the common stock of University of Phoenix Online soared from $20 per share to $36 per share, an 18% increase.\textsuperscript{49}

In counterpoint to such impressive earnings, Phoenix occupies a narrow niche in higher education. Its curriculum is centered on business and its main delivery of courses is provided electronically. It does not offer courses in areas such as the arts and humanities, engineering, and the natural and physical sciences, which are the heart of traditional universities. Additionally, it does not provide meaningful student interaction and social opportunities. Although it attracts a relatively large number of students for its integrated operation and expects substantial increases in enrollment, the nature of its student body diverges significantly from that of traditional universities. Students enrolled by Phoenix are generally older, already employed in positions that are likely to be linked to a career, and depend heavily on tuition reimbursement from their employers. The average age of students enrolled by Phoenix is thirty-four, compared with the average age of traditional college students, which is twenty-five and half.\textsuperscript{50} Students at traditional universities don’t usually have outside employment that provides reimbursement for their educational expenses and most do not plan for their careers to commence until after they have completed their studies.

Commercial educators share Phoenix’s dominant theme and mission of business and technology, but some package their offerings in a manner that has a greater resemblance to traditional universities. For example, DeVry University has a minimum age for admission of seventeen and emphasizes its hands-on direct delivery of instruction, provided to 55,885 students on campuses and at centers located throughout the United States and in Canada.\textsuperscript{51} It features year-round education, divided into three “terms,” each of which last fifteen weeks.\textsuperscript{52} It offers bachelor’s, associate and diploma degrees through its undergraduate programs and a master’s degree from its Graduate School of Management.

The institution has a strong commitment to diversity, which is reflected in its large enrollment of minority students, many of whose parents never attended college.\textsuperscript{53} DeVry
emphasizes the hardy nature of its curriculum, its efforts to enhance the ability of its students to apply reasoning in solving problems, and its placement successes.54

However, according to a recent article in the Wall Street Journal, commercial educators like DeVry have experienced setbacks in enrollment in recent periods due to softening of the job market for employees who have technological skills.55 DeVry has encountered successive decreases in its undergraduate enrollment for its last three quarters, even though its has generated profits in each such period.56

Based on the foregoing, it is apparent that predictions that commercial educators pose threats to the future survival of traditional universities are nonsensical. The reasoning is akin to comparing a dessert with a full-course meal. Commercial educators occupy but one small chair at the huge higher education dinner table. They basically provide technical and management knowledge along with training in specific skills to meet employment requirements. Advocates for traditional universities argue that employers are not as interested in whether new employees have specific skills to meet their job requirements as in whether they write competently, speak well and have strong skills in interacting with others.57 They also assert that employers would be better served by employees who have an understanding of character, integrity and morality and not the attitude that prevailed in the Enron and WorldCom travesties.58 The comprehensive nature of a traditional university, its reputation, its holistic commitment to students, its depth and breadth of faculty, its availability to public subsidies and the will of donors to enlarge its endowment, its alumni connections, and its provision of social opportunities belie any negative conclusion about survival. However, a second question does not lend itself to such an easy answer: Do commercial educators pose challenges or offer examples that should be examined and utilized by traditional universities?

In order to address this question, it is necessary to examine the common objectives and strengths of most commercial educators that may not be central parts of the missions of most traditional universities, but that could be utilized more effectively by traditional universities. These appear to be (1) their sophisticated use of technology for delivery of course work,
including the ability to provide education at all times and places; (2) their attention to lifelong learning; (3) their focus on internationalism, including recruitment of students from other countries and global transmission of educational materials; and (4) their ability to increase revenues and earn a profit from the provision of learning.

It is important to assess each of these areas briefly and to underscore for lawyers and administrators some of the laws and policies they may encounter if traditional universities choose to adapt these cornerstones to their own roles and missions. Such expansion may result, in part, from the direct and indirect effects of the successes of commercial educators.

The first inquiry will probe the heart of commercial educators, which depend upon electronic transmission of academic offerings for their energy source. These profit-oriented automatons thrive on a high level of expertise and exposure, which may put them in the forefront of this particular form of delivery of education. Moreover, the fact that many students are now drawn to this format, even though it may be for purposes related to their employment, calls for careful thinking on the part of traditional universities about a proper balance between online learning and the common classroom format. Under such circumstances, it will be necessary to assist faculty, who often disdain technologically based education, to visualize the value of this mechanism to the continued progress of the institution. Although many traditional universities have advanced their technological capacity to provide distance and distributed education, a large number have postponed such effort, based on lack of funding, awaiting the time when such action becomes imperative. Of course, delay may be self-destructive because the ability to catch up with seasoned providers of education at an advanced stage may be a Herculean task.

Besides the direct challenge posed by commercial educators, it is also important to examine embryonic developments that may portend future attention to electronically oriented education. For example, the U.S. Army instituted its own form of a cyber education last year through eArmy U, which provides services through eleven military institutions to 31,000 soldiers, representing 5% of the total personnel in this branch of the military. The program is projected to reach 80,000 soldiers by 2005. More than 20,000 courses and ninety degree
programs are offered through the consortium, which includes twenty traditional colleges and universities, including Central Texas University, Florida A&M and Tri-State University in Indiana. Participants are given free tuition, books, and a “tech package” that includes a laptop. The popularity of this program is evidenced by around 18% of the participants who have extended their enlistments to retain their eligibility for participation. Many of the soldiers who have been exposed to this form of education are likely to seek direct admission to colleges and universities in the future. This underscores the importance of careful planning as to the viability of technologically based offerings by traditional universities.

Additionally, about fifty charter schools at the secondary level have instituted concentrated virtual learning programs. This represents an increase of twenty such schools during the past year, which provides some indication of their popularity. Although many of these providers now serve housebound, home-schooled and rural pupils, if this method of delivery becomes attractive to a broader range of children in more heavily populated areas, students may ultimately become conditioned to seek online learning when they enter college.

However, besides assessing futuristic challenges, traditional universities should look now in their own backyards to identify cyber-based challengers. They are likely to find that competition posed by technologically based academic programs is not confined to commercial educators, but lurks in the grasp of their close friends and neighbors--other traditional universities. A recent article by three specialists in the area of distance and distributed learning discloses that at least eight universities have created profit based units for such activity, and more than twelve states have formed virtual universities to provide information gathered from their state institutions of higher education for single e-learning portals and course catalogs.

Lawyers and administrators who are required to address legal and policy issues pertaining to electronic transmission of educational material should be familiar with defamation and copyright law, including requirements for compliance, infringement and concepts of fair use. They should also understand application of The Technology, Education and Copyright Harmonization Act (TEACH), L105-304, signed into law on November 2, 2002, which gives
educational institutions protection for “fair use” in electronic transmission, and The Digital Millennium Copyright Act (DMCA), Pub. L. No. 105-304, 112 Stat. 2860 (October 28, 1998), which limits infringement liability for "service providers" and prohibits circumvention of technological protection measures.66 Institutional policies should be adopted or updated for all the areas mentioned above. Further, it is particularly important that institutional policies delineate the respective ownership and development rights of the institution and its employees in intellectual property. Some legal scholars question whether omissions in recent amendments to the copyright laws have impaired the inferred “custom” standard that has historically enabled faculty members and certain other employees of institutions of higher education to avoid the “work for hire” doctrine and claim individual ownership of their written works.67 Therefore, it is critically important to determine the scope of these rights in advance though written policies.

Some excellent web sites providing information and guidance about the laws and associated policies in the intellectual property arena exist in various places on the Internet. Perhaps the best one is the site for the University of Texas, General Counsel, Intellectual Property page located at http://www.utsystem.edu/ogc/IntellectualProperty/index.htm.

The next area of examination is the attention given by corporate educators to “lifelong learning.” This approach to education has practical dimensions for commercial educators by referring to continuous acquisition of new skills and increased knowledge by employees in particular businesses, especially large organizations. However, in traditional universities, the term tends to have a more philosophical meaning, which may be capsulized as a commitment to scholarship, passion for learning and ability to engage in critical reasoning. Such traits are usually presented in the context of self-learning following graduation rather than future receipt of more formal training.

Unfortunately, this may be another area where traditional universities risk “being asleep at the switch” by not being more aggressive in developing plans for meeting the needs of the post-college student in the future. One analyst notes that “by the year 2020, more than a third of all Americans will be 50 or older and by 2050, people over 65 will outnumber children 14 or
younger.” He emphasizes that “the ‘baby boomer’ generation can expect to remain physically active well into their seventies and beyond.” Moreover, he points out that recent research conducted by the American Association of Retired Persons discloses that eight in ten baby boomers plan to work during retirement.

Some individuals in mid-life, such as divorcees and newly unemployed, may need additional training to meet demands of the workplace, which are becoming more sophisticated. Others may require more advanced education to meet credentialing and other requirements for advancement in their careers. Some may simply want to go back to school after retirement or following other major life changes. However, traditional universities appear to be too busy, or perhaps overwhelmed, with their current enrollees to give much attention to course work or on-line instruction to meet these needs.

An official of an adult learning center stresses that many individuals beyond the normal age for entry into college also have a great need for remedial training, which is often ignored in discussions of lifelong learning. She observes, “In addition to overhauling the way we approach the needs of an increasing diversity of students, we are confronted with the reality that we need to speed up our pace. Research shows that the number of new workers will be insufficient for our nation’s workforce needs. Sadly, 40 percent of the U.S. adult population lacks the necessary literacy skills required to perform higher level jobs that demand considerable reading or writing. It is perhaps our best kept secret that in the United States, the ranks of illiterate workers are on par with developing third-world nations. Further, 60 percent of our future jobs will demand computer skills that today only 20 percent of our workers possess. These figures are crippling considering that each year, U.S. businesses lose an estimated $60 billion in productivity due to employees’ lack of basic skills. With unprepared workers in the pipeline and a range of demographic forces insisting on institutional changes, how will we step up to meet the challenge of educating tomorrow’s workforce?”

Administrators of higher education should give attention to policies and plans providing lifelong learning, whether involving formal course work at the campus or use of on-line
technology. Initially, institutional offerings might be limited to alumni, relatives of students, and other persons with significant connections with the institution. An evaluation should also be made of on-line services that might be utilized in such training. Lawyers should note the resources listed above under technology and also be prepared to address various contractual issues involving arrangements with recipients of this alternative form of education. They should also be familiar with the application of federal and state laws relating to discrimination, particularly as to age.

The third area for review is the achievement of an international presence, which commercial educators often emphasize. Some note that by using on-line resources, they are able to provide education to students in other countries without burdening them with all the problems associated with entry into the United States. They also point out that students prefer learning at their homes in familiar surroundings.

Traditional universities have focused more on physical presence, either involving attraction of students from other countries to their campuses or carrying out programs in which students from the United States study abroad. Such an approach has worked well for many institutions in the past. However, since the attack on the World Trade Center, the United States has adopted a massive number of laws, including several regulation of non-immigrant visas, monitoring of the lawfulness of the presence of foreign nationals in the United States through a complex computer system known as SEVIS, monitoring of the lawfulness of the presence of foreign nationals in the United States through a complex computer system known as SEVIS,\(^{72}\) and giving law enforcement officials more latitude in investigation and surveillance of persons from other countries and individuals who may be suspect of terrorism under the USA Patriot Act.\(^{73}\) These actions by the United States government have probably diminished the ability of traditional universities to compete with their online rivals in certain specialized areas in which commercial educations give primary attention. However, it remains to be seen whether some, such as Phoenix University, will move toward a broader curriculum and serve as a counterpoint to international efforts by traditional universities.

Lawyers who provide assistance to entities that focus on international objectives should be aware of some legal issues that are not commonly addressed. These include the Arms Export
Control Act, 22 U.S.C. 2778 (2002), and the International Traffic in Arms Regulations (“ITAR”), promulgated by the State Department to implement the Act. These mandates restrict export of materials and information relating to information and materials relating to weapons and weapons technology and matters inconsistent with national security. In some cases, exports to a specified country may be prohibited entirely. An interesting facet of ITAR is that communication of covered information to a student or faculty member that might be carried through human knowledge by him or her in travel to a covered county is deemed to be an export.

Counsel should also be aware that courts in other countries have accepted jurisdiction over certain claims due to Internet transmissions made by students and other persons associated with colleges and universities. Since the libel laws of some countries, such as those in the United Kingdom, are much stricter than those in the United States, an institution can face serious consequences for claims of defamation made to Internet communication. The cost of retaining counsel and adjudicating such matters can be enormous. Both Cornell University and Dow Jones & Co. have been forced to defend libel claims in such jurisdictions, which creates important concerns for all institutions of higher education that facilitate Internet transmissions for the 2002-03 academic year.

Furthermore, international travel by student groups can pose unexpected risks of liability for sponsoring institutions. A number of disturbing incidents involving harm to students and their colleagues in overseas locales has made institutions much more diligent in taking proactive steps to deter actions that may be brought against them. For an excellent review of issues and applicable laws see, William P. Hoye and Dr. Gary M. Rhodes, An Ounce of Prevention is Worth...The Life of a Student: Reducing Risk in International Programs, 27 J.C. & U.L. 151 (Summer 2000).

Finally, the realization of profits by corporate educators must be particularly vexing to traditional universities. For example, the University of Phoenix continues to have heightened revenues and net earnings each year. Yet, a significant number of colleges and universities,
particularly in the public area, are facing substantial cuts in their budgets due to significant weaknesses in the economies of most states. Several institutions, including some that emphasize education in technology, have encountered horrendous deficits. For example, in early September 2002, Michigan Technological University faced a $76.1 million shortage.\textsuperscript{77} Even larger and more prominent institutions and their systems, which normally have large revenue bases, did not fare much better. The Oklahoma State University System registered an operating loss of $53.7 million and the University of Michigan coped with a staggering deficit of more than one-half billion dollars, $597.5 million.\textsuperscript{78} Furthermore, the budget for the University of California System for the 2002-03 academic year has already been slashed by $248 million.\textsuperscript{79} Similar results by more thinly financed higher education entities led Standard & Poors to issue a report in late November 2002, containing the dire warning that “colleges and universities might ‘consolidate in large numbers or close as they struggle against stagnant levels of financial resources and substantially higher levels of debt.’”\textsuperscript{80}

Revenues of public institutions are largely a product of state subsidies, federal grants, gifts and tuition. As state subsidies continue their downward spiral, institutional endowments, the mainstay of private traditional universities, also tumbled. \textit{The Chronicle of Higher Education} reported on December 17, 2002, that such endowments lost 6\% of their market value in 2001-2.\textsuperscript{81} Moreover, some pre-paid tuition plans were bombarded. In Colorado, news accounts disclosed that the state’s investment plan for future tuition faced a crisis and that the State Deputy Treasurer had stated that if tuition continued to rise and investment returns remained below long-term expectations, the plan might not be able to honor all of its contracts.\textsuperscript{82}

Most traditional colleges and universities responded to the devastating news discussed above by raising tuition. Therefore, future students will bear much of the economic woes of their institution. However, they have few alternatives other than to pay the sticker price and “buy the car.” They must wonder, however, if their institutions have done their best in operating efficiently so as to lower costs and if there is not some way that they, like the University of Phoenix and DeVry, could have earned some extra money from their operation to set aside for future rainy days and even thunderstorms. Some of these students might be interested in ideas
set forth in a book called Academic Capitalism, suggesting that traditional universities could do far better in realizing profits by capitalizing upon their human assets and joining ranks with industry on a global scale.

However, higher education, long a monopolist, has not done well in efforts to earn money. One need only review the landmark article called, The Kept University, by Eyal Press and Jennifer Washburn, which was published by the Atlantic Monthly in March 2000. The article takes the reader through futility and poor direction in profit-making efforts, many of which were often roundly attacked by students.

Indeed, students are likely to have incredible leverage in determining the success or failure of both commercial educators and traditional universities in the future. Moreover, some new competitors for the student dollar are likely to emerge. One of this is being fertilized in Colorado by members of a Blue-Ribbon Commission of the Governor and the Commission on Higher Education. A proposal is expected to be submitted for approval in the next session of the Colorado General Assembly calling for adoption of an arrangement that will be the first of its kind in the United States. The measure will give each student an equal amount of money from the state for use in enrollment in a state college or university. Private institutions will not be included. Students will be free to vote with their feet as to which public institutions have the most desirable offerings and feature the most acceptable tuition rates to be charged in addition to the state subsidy. The arrangement is commonly called a “voucher.” If this proposal is adopted in Colorado and other states enact similar measures, students who meet admission requirements will have primary funding for attending the Colorado public college or university of their choice.

Conclusion

The competitive arena for the student dollar may involve new dynamics. Major commercial educators are now expanding into additional states and other countries and enlarging and diversifying their curriculum, which is destined to bear a closer resemblance to offerings of
mainstream colleges and universities. However, traditional universities are likely to continue to dwarf such entities so long as they maintain their fiscal strength. Recent reports of budgetary problems among many traditional universities may simply be a reflection of a troublesome national economy, although they may portend more difficult financial problems for such institutions in the future. Their ability to depend upon governmental support and private donations appear to be flagging. State officials and governing boards appear to be heightening their demands as to greater internal production of revenues and more effective control of costs. Donors are increasingly becoming embroiled in conflicts with colleges and universities over the proper use of their gifts. Traditional universities may seek to enhance their financial well-being through creative exploration and incorporation of some of the key attributes of commercial education, including greater use of technology for distance learning, international delivery of course work and development of programs for lifelong learning. Commercial educators also have some important methods for limiting costs, including the use of specialized part-time staff and reduction of classroom time and library investments that can be useful for examination and potential implementation by traditional universities.

Traditional universities also have new armaments under development that may give them added ammunition in any competition that may develop for entering students. For example, the employment of voucher systems may ultimately give both public and private mainstream institutions the ability to make cash offers to potential students for a large portion of their college expenses on a “take it or leave it” basis. Commercial educators are unlikely to have a countering proposition. Thus, the topic for future presentations like the one that produced this narrative are likely to be reversed. The new topic may be “Threats and Challenges of Traditional Universities to the Survival of Corporate Universities.”


3. Donors and universities have wrestled over the use of donated funds during the last several years. See, e.g., Joye Mercer, *Yale Returns a $20-Million Gift*, THE CHRONICLE OF HIGHER EDUCATION, Mar. 24, 1995 at A36; Richard Morgan, *Pet-Cloning Project at Texas A&M Ends as Sponsor Withdraws Support*, THE CHRONICLE OF HIGHER EDUCATION, Nov. 11, 2002 at A25; Give & Take, *Phoenix President Provided Funds to Clone Cat*, THE CHRONICLE OF HIGHER EDUCATION, Apr. 5, 2002 at A21; Vincent Kiernan, *Family Pays Texas A&M Team $2.3 Million to Clone Beloved Dog ‘Missy’*, THE CHRONICLE OF HIGHER EDUCATION, Aug. 28, 1998; Greg Winter, *School Learns Cost of a Gift-Giver’s Anger*, N.Y. TIMES, Nov. 14, 2002, at 1; and Michael J. Mandel, *Commentary: And the Enron Award Goes to...Enron*, BUSINESS WEEK ONLINE (May 20, 2002), <http://www.businessweek.com/...t/magazine/content/02_20/b3783057.html>; Michael Berbube, *A Shakespeare Department and Other Business Ideas for Colleges Everywhere*, THE CHRONICLE OF HIGHER EDUCATION, Jan. 28, 2000, at A64; SAM M. WALTON COLLEGE OF BUSINESS, The Walton College: Wired to Lead (2002). However, some institutions have guarded against such turmoil by making special efforts to satisfy their donors. For example, the University of California (Irvine) established the Taco Bell Chair in Information Technology Management and Washington State University rendered similar appreciation by instituting the Taco Bell Distinguished Professor. The University of Arkansas responded to a matching donation of $300 million by renaming its College of Business the Walton College and the holder of the Enron Professor of Economics continues to maintain his title at the University of Nebraska.


6. Id.


10. Id., See also, STUART CUNNINGHAM, YONI RYAN, LAWRENCE STEDMAN, SUELLEN TAPSALL, KERRY BAGDON, TERRY FLEW and PETER COALDRAKE, Corporate, for-profit and virtual universities and the emergence of the corporatised universities, THE BUSINESS OF BORDERLESS EDUCATION 9-25 (2000); John Helmer, EPIC GROUP PLC LEADERS IN E-LEARNING (Sep. 2002) <http://www.epic.co.uk/news.features/latest_features/corp_uni_tank.html>.

11. NADER, supra note 9; See also, STANLEY ARONOWITZ, THE KNOWLEDGE FACTORY 162-163 (2000).


16. See id.


19. Id.

20. Id.


22. Id.


24. JEANNE C. MEISTER, CORPORATE UNIVERSITIES: LESSON IN BUILDING A WORLD-CLASS WORK FORCE (1998); See also, ALLEN, *Supra* note 13.


34. See id.


37. Id.

38. Capell’s estimated amount for spending is somewhat below the approximately $200 billion for such expenditures reported recently by the Chronicle of Higher Education, but its information reflects data for public institutions for the 95-96 academic year, and for private institutions for the 96-97 academic year.


40. Id.


42. Id. See also, Lisa Gubernick and Ashlea Ebling, I got my degree through E-mail, FORBES MAGAZINE, June 16, 1997, at 84.

43. See, supra note 41; See also, Gubernick and Ebling, supra note 42.


48. Id.

49. See, supra note 47, at 3; See also, Yahoo!Finance (Nov. 24, 2002), http://finance.yahoo.com>.


52. See, DeVry University, Tuition and Fees, (visited Dec. 6, 2002) <www.devry.edu/finance_tuition.html>.


54. Id.


60. Murline, supra note 59.

61. Id.


63. Id.


71. Id.


75. 22 C.F.R. § 120.17 (2002) for definition of “export”; 67 Fed. Reg. 61 (2002) for a recent exemption to the Regulations for disclosure of certain information obtained through fundamental research that is published and shared broadly within the scientific community.


78. Id.

79. Id.


85. Id.