# Chapter 5.5
# Legal Implications of Online Assessment:
## Issues for Educators

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## ABSTRACT

*This chapter provides a survey of basic legal issues that online assessment developers and users need to be aware of and account for in their assessment design, development, implementation, and interpretation activities. High-stakes assessments such as professional certification and college admissions exams are particularly vulnerable to legal challenge when there is evidence of problems with respect to validity, reliability, testing fraud, or unfair bias. The chapter provides straightforward suggestions that will help assessment developers and users avoid legal problems with their exams.*

## INTRODUCTION

Assessment of knowledge and skills has been a part of every documented society throughout history. Individuals desiring to belong to a societal group or institution such as a professional association are often required to demonstrate their competence within the relevant knowledge and skill domain of that organization. Examples of such organizations include companies that provide product or skills-based certifications, licensing bodies (such as the American Medical Association), and government agencies. Each of these organizations defines the criteria for the admission and acceptance of licensed or certified professionals and then designs various assessment instruments accordingly. This practice is becoming even more prevalent in the early years of the new millennium.

As individuals pursue new levels of knowledge, professional qualification, college admission, and limited scholarships, they usually submit to assessments that serve a "gate-keeping" function that determine the potential of candidates to pursue further professional growth opportunities. Online

assessment has become a very effective tool in this endeavor with its capabilities to not only deliver "traditional" item types, such as multiple choice, true–false, and short answer, but with its powerful capacity to deliver many other item types such as drag-and-drop, point-and-click, and very complicated task simulations. With the advent of U.S. government mandates such as the No Child Left Behind Act, state education organizations are becoming increasingly interested in online assessment for the high-stakes testing programs in the public schools (Electronic Education Report, 2002). This movement of increased online assessment coupled with legislative and regulatory interest is potentially confusing in both the educational and industrial sectors of society. Harris (1999) stated that the "assessment landscape is dotted with legislative, regulatory, and legal crabgrass that at times distracts test publishers from their principle business of providing quality tests and assessment services to test users and test takers" (p. 1).

The stakes are high—for test publishers and users and the test takers. Each group has rights and expectations that need to be legitimized and protected by law. Test developers and test users look to protect and ensure their rights with respect to issues such as financial, copyright, validity, and reliability. Additionally, developers and users need to protect the intellectual and technological innovations of the assessments in order to ensure that the results and interpretations maintain integrity and value within the target knowledge and skill domain that they assess.

Test takers want to have confidence that their scores on a given assessment closely reflect their true abilities. They have rights of equal access to assessment materials, fairness in comparisons with other test takers, and proper interpretations and judgments of their scores. When any of these rights are compromised, the purposes of the assessment process and the value of the resulting outcomes are thwarted. Consider the following two scenarios—one from a professional setting and the other from academia.

## Mario and the Certification Exam

Mario is a qualified computer systems consultant who has several years of experience in designing, installing, and fine tuning sophisticated enterprise communications and data systems around the world. As his employer's business has grown, the executives of the company created the policy that all computer systems consultants must be certified in the products that they recommend and install. Mario has invested time and money in studying the latest technologies and has prepared to take the appropriate online certification exam for his discipline.

Upon taking the exam, Mario is frustrated to discover that the assessment items primarily test his ability to remember terms, procedure steps, and system part specifications. In Mario's work environment, he is accustomed to looking up such information in a readily accessible database table on his PDA as he performs much more complicated tasks in serving his clients. Still upset with the content of the exam, Mario clicks on the final item, reviews his scores on the screen and discovers that he did not pass. Without passing the exam, he will not receive the certification and his employment is now in jeopardy. What are the legal implications in this case?

## Kristina and the Graduate School Admissions Exam

Kristina is trying to get into a prestigious graduate program and needs to achieve a score in the top 10% of all examinees on an online, standardized exam in order to be considered by the school's admissions committee. On her first attempt, she scores in the top 25% category—a very poor score for the goal she is hoping to achieve. She

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