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THE FREE LEGAL INFO LANDSCAPE

Emily Allbon asks whether we can expect an inspiring view for the free legal future

As ‘gatekeepers of information’ librarians are most concerned with ensuring the best quality information makes its way to our users, whoever they might be. Law librarians or legal information professionals work within all sorts of organisations: academic institutions, law firms, barristers’ chambers, government libraries, inns libraries and in-house within companies. The last 10-15 years have seen a massive shift in the nature of legal research and the tools available to us and yet we are still in a situation where many of the primary legal materials in the UK are inaccessible to those who cannot afford the cost of subscription legal databases.

Librarians have always been very pro-active in pushing those resources provided at no cost, alongside the paid-for commercial services that we have no choice but to rely upon. These recommendations often materialise in the form of legal gateways, created by librarians to point their users in the direction of useful websites. The first of these was *SOSIG Law* (Social Sciences Information Gateway), a huge portal to law websites available at no cost on the internet. The resources were all evaluated and described by librarians. This later became the *Intute* service when funding ceased, and now with JISC halting funding in 2011, the Institute of Advanced Legal Studies have taken over the data to integrate into their *Eagle-I* service.

Others of note in the UK include *Lawbore*, the portal for law students from City University, created to ensure students would know where to find legal information online (even if they went on to work in places where legal databases would be unavailable), and the many examples of collaborations in other jurisdictions like *EISIL* from the United States. Within universities the push to invest in repositories has often been driven by the librarians, wanting to provide a service free to all, sharing the institution’s intellectual capital with the world whilst loosening the chains of reliance on prohibitive journal subscriptions.

Essentially librarians play a role in promoting resources and advocating on behalf of our users, representing them against often-aggressive commercial publishers. Can we really make a difference?

In the US the AALL (American Association of Law Libraries) have had enormous influence on the way federal and state documents are made available online with their un-snappily entitled ‘*Principles and Core Values Concerning Public*

Information on Government Websites.¹ This document and accompanying pressure from AALL lays down minimum requirements for the publication of legal materials on the basis of accessibility, reliability, comprehensiveness and preservation. Importantly they draw out what is termed ‘official’, an important point we will visit later in this paper. This commitment to ensuring that the electronic document is as trustworthy as the print material has resulted in its adoption by the Uniform Law Commissioners in the US in the recently enacted Uniform Electronic Legal Materials Act.²

The current situation

In the UK paid-for services still dominate: the long-running duopoly of Lexis and Westlaw overshadowing all others. In the last one to two years the situation has altered a little in that smaller publishers have been withdrawing their content to run their own specialised services on their own platforms (Informa, Jordans). The ICLR (Incorporated Council of Law Reporting) have also created their own service ICLR Online, but at present the content remains on other platforms too.

Whilst it is preferable to see the range of products increasing, it does leave information services and libraries in a difficult spot; we often still need to subscribe to the big two, but then need to pay extra for these niche products to retain our coverage. Many libraries have a policy of e-first, which means that they have cut the physical hard copy (to increase access, save space) and as most services don’t allow you to archive content, as soon as you cancel an electronic subscription access to all content disappears, no matter how many years you may have been subscribing.

In addition many database providers focus their services around the requirements of their biggest customers, the global law firms, meaning that often the academic customers lose out in terms of functionality that works for them.

So what can you find for free online?

There is a great deal of law available at no cost online, certainly compared to a decade ago. It is however, not always easy to find and sites are not ‘joined up’ to create any kind of cohesive picture. The one stop shop does not exist.

In many countries now there is a culture of publishing judgments online, usually in full text. This may be via the specific court or might be held on a website run by a legal information institute (more on these later). Usually these are published on a case-by-case basis without the value-added features you would expect from a subscription service such as linking to similar cases or related legislation. Many

¹ AALL, ‘Principles and Core Values Concerning Public Information on Government Websites’ (AALL, 2007) <<http://www.aallnet.org/main-menu/Advocacy/recommendedguidelines/principles-core-values.html>> accessed 11 March 2012

² Amy Taylor, ‘Authentication and Digital Law: Report from AALL’ (Government Information Division, SLA) <<http://govinfo.sla.org/2011/07/28/authentication-digital-law-report-from-aall/>> accessed 08 March 2012

courts publish their decisions online almost instantaneously and there are some great examples of those who extend this with commentary too: the UK Supreme Court blog being a prime example.

Similarly many governments publish their legislation online, however the big stumbling block here is how the amendments are incorporated.

Access to treaties and other instruments of ratification with legal impact is also scattered widely across the web. The disparate nature of these resources means that it can be quite a struggle to find what you need.

Journals are very tied down. There are a few sources of free online legal journals like DOAJ (Directory of Open Access Journals) but in the UK these make for shamefully slim pickings. Academic writers gain their prestige via published work and the journal publishers make the most of this.

To gain an insight into what's available you simply need to look at some of the gateways mentioned at the beginning of this paper, however for primary legal materials the big two are as follows:

BAILII

As the main resource for free legal material in the UK, BAILII offers access to both case law and legislation. There are omissions, notably the criminal courts but what BAILII has achieved in a country so enslaved by commercial legal publishers is pretty remarkable. BAILII contains 80 databases and covers six jurisdictions, however there is a far greater volume of content post 1997.

BAILII undertook some really useful work for the academic community under its OpenLaw project; asking lecturers and librarians for their recommendations of the key cases in each subject area and digitising 2500 of them. It has also made excellent progress around law reform coverage; making available Law Commission publications, and painstakingly scanning and converting over 6,900 Privy Council judgments.

BAILII as a legal information institute (in this case the British and Irish Legal Information Institute) first launched in 2000, some eight years after the first incarnation of these at Cornell University Law School in 1992, which published US Supreme Court judgments online. After Cornell, came LexUM from the University of Montreal and the giant AustLII (University of Technology, Sydney and University of New South Wales) in 1995.

You might ask what connects these LIIs? What features characterise them? Graham Greenleaf one of the founding members of AustLII describes their characteristics thus:

1. They publish legal information from more than one source (not just 'their own' information), for free access via the internet, and

2. They collaborate with each other through membership of the 'Free Access to Law Movement' (FALM).³

Greenleaf goes on to list other features which are shared by the majority of LIIs, including collaboration through data sharing networks, independence of government and the use of open source search engines.

The FALM is a collaborative and decentralised initiative formed in 2002, representing in excess of 900 databases from over 139 countries. Their principles are enshrined within a Declaration on Free Access to Law,⁴ and aims centre around the adoption of open standards, sustainability of models and effectiveness of use.

Put simply, the LII concept is to gather all the free legal resources onto one uncluttered searchable platform, using a powerful search engine to index the material and allow users to search across different types of legal material.

Legislation.gov.uk

It has been a rocky road for the provision of free online legislation in the UK. We have had free access to legislation since 1996, then published by Her Majesty's Stationery Office (HMSO) (later known as the Office of Public Sector Information [OPSI]).⁵ Coverage was extended some years later to 1988, but until 2006 only the original un-amended statutes were available. Whispers of the development of a database of amended legislation had been circulating since the early 1990s and the Statute Law Database (SLD) finally arose in 2006. OPSI and the SLD were combined and re-launched as Legislation.gov.uk in July 2010. It was heralded by Lord McNally, then Minister of State and Deputy Leader of the House of Lords, who celebrated its launch with the following words:

This is the public's statute book. Legislation.gov.uk presents complex information in a clear and intuitive way. This is groundbreaking work that puts democracy at the heart of legislation and makes a major contribution to the government's transparency agenda.⁶

Ironically it is not until you have experienced navigating a publication like Halsbury's Statutes in hard copy that you come to realise why our law might be so difficult to make provision for online.

There are so many different ways we might require the law for a start: as it was when given royal assent, as amended today and also at a particular point in time.

³ Graham Greenleaf, 'Free access to legal information, LIIs, and the Free Access to Law Movement' in Richard A. Danner & Jules Winterton (eds), *The IALL International Handbook of Legal Information* (Ashgate, 2011) p.202

⁴ Declaration on free access to law (WorldLII, 2007) <<http://www.worldlii.org/worldlii/declaration/>> accessed 10 March 2012

⁵ Janice Sayer, 'Review article on the Statute Law Database' (2008) LIM 299

⁶ 'Groundbreaking legislation website launched' (The National Archives, July 2006) <<http://www.nationalarchives.gov.uk/news/478.htm>> accessed 10 March 2012

The current situation is that we can find much of the first for free, less than half of the second and little of the last.

What about other countries?

In March 2010 there were 33 members of the Free Access to Law Movement. Their coverage and origins all differ enormously, despite their shared mission. As we have seen, many LIIs have universities as their driving force and indeed financial backers (AustLII, the original LII at Cornell, HKLII), others are funded by non-profit trusts, foundations or NGOs. This can be seen via BAILII whose Trust comprises courts, universities and the legal profession. The legal profession has funded LIIs like CanLII, Juri Burkina and CyLaw, as a professional and public service. Some of the problems faced by the LIIs include overcoming technology issues, locating investment and finding people to commit. Here's a quick overview of some of the LIIs from Graham Greenleaf:⁷

- **AustLII** (Australasian Legal Information Institute) started 1995, now contains nearly 400 databases of Australian law, including decisions of 120 courts and tribunals
- **CanLII** (Canadian Legal Information Institute) started 1993 as LexUM. LexUM then developed CanLII in 2000. CanLII contains over 150 databases – including historical and up to date versions of legislation from all 14 jurisdictions
- **HKLII** (Hong Kong Legal Information Institute) commenced in 2002 with 13 databases and a bilingual system
- **PacLII** (Pacific Islands Legal Information Institute) provides 180 databases covering the laws of 20 islands/territories

Other LIIs include NZLII (New Zealand), CyLaw (Cyprus), JuriBurkina (Burkina Faso) and SALII (Southern Africa). More recently LIIs have been created to allow federated searching: one platform to search several LIIs at once. There are plans afoot for a EuroLII but currently those existing include:

- **AsianLII** – portal covering 28 Asian countries (3 LIIs)
- **CommonLII** – portal containing data from 56 commonwealth countries (11 LIIs). The inclusion of the full series of the English Reports was an exciting addition
- **WorldLII** – portal containing data from 183 countries (17 LIIs). Allows searching of 1400 databases, including at least two million cases

⁷ Graham Greenleaf, 'Free access to legal information, LIIs, and the Free Access to Law Movement' in Richard A. Danner & Jules Winterton (eds), *The IALL International Handbook of Legal Information* (Ashgate, 2011) p.204

Do professionals really use the LIIs?

As the situation in each country is so different, the success of the LIIs isn't easy to measure. In both Australia and Canada, there does appear to have been a real move towards using the free resources provided by the LIIs in tandem, and sometimes in preference to the paid-for subscriptions. A survey on the use of CanLII as far back as 2008 found that 43% of Canadian lawyers said they could do half their legal research via CanLII, and 71% stated that it had reduced their legal information costs.⁸

In the UK BAILII is without doubt a popular service, with 40,000 unique visitors each week, viewing approximately 800,000 pages each week.⁹ A snapshot of the use of free resources for law can be seen in an MSc dissertation completed at City University in 2010.¹⁰ Sarah Jones focused her research around barristers' chambers, surveying chambers librarians and barristers. Sixty-four per cent of those surveyed used BAILII at least a few times a week, with 52 per cent using sites like AustLII and CommonLII a few times a week. Participants also noted high use of sites like Eur-Lex (official portal of the European Union) and HUDOC (human rights materials).

Free legislation sites were not held in much esteem; with too many issues perceived around trusting the currency of such a source. Seventy per cent of those surveyed said they would always use a subscription site for legislation.

BAILII itself has recently conducted a detailed survey but the results are not available at time of going to press. A survey focused on an individual set of chambers in 2011 revealed approximately 500 pages of the BAILII site being accessed weekly.¹¹

When is material 'official'?

Countries have been slow to grant their online representation of legal materials with the same 'official' status given to the print version. Claire Germain speaks of the confusion between 'official' and 'authentic', sometimes used interchangeably within this context and on other occasions as separate concepts. She defines authenticity as 'an online authentic legal resource is one for which a government entity has verified the content to be complete and unaltered from the version approved or published by the content originator'.¹² This authenticity would normally be provided by encryption technologies.

⁸ Catherine Best, 'Make CanLII your first stop for legal research' (Law Society of British Columbia, October 2008) <<http://www.lawsociety.bc.ca/page.cfm?cid=480&t=Make-CanLII-your-first-stop-for-legal-research>> accessed 11 March 2012

⁹ 'BAILII's appeal for funding' (BAILII, March 2012) <http://www.bailii.org/bailii/appealdetails.html>> accessed 09 March 2012

¹⁰ Sarah Jones, 'Freeing the law: a study of free online legal resources and their use by barristers' (Msc dissertation, City University 2010)

¹¹ 'BAILII's appeal for funding' (BAILII, March 2012) <<http://www.bailii.org/bailii/appealdetails.html>> accessed 09 March 2012

¹² Claire Germain, Digitising the World's Laws in Richard A. Danner & Jules Winterton (eds), *The IALL International Handbook of Legal Information* (Ashgate, 2011) p.193

In the UK the requirement to use the ‘official’ report within court (the Law Reports published by the Incorporated Council of Law Reporting), as per Lord Woolf’s practice direction¹³ means that reports on BAILII are useful for background research but not for court use. This is not unusual: many countries will not recognise the official status of their materials published online. In the European Union, the Eur-Lex website states that ‘only European Union legislation published in paper editions of the Official Journal of the European Union is deemed authentic’.¹⁴ France seems to stand out in this realm by declaring their free digital versions authentic in 2004.¹⁵

The backlash to LIIs

In September 2011 an editorial in the *Guardian*¹⁶ discussed the online provision of judgments to the public, questioning to what extent a site like BAILII was actually improving access to judgments, particularly in light of it not allowing search engines like Google to index its judgments. BAILII says this is because judgments may sometimes need to be removed or altered at a later date, and not every search engine can guarantee that pages will not be cached, making older versions visible. Sir Henry Brooke, retiring Chairman of the BAILII trustees, defends their position further by stating that they provide ‘a searchable database of judgments on one website... [which is] sufficient to make this source of law freely available to the public’.¹⁷ He goes on to state that making it available to other search engines is unnecessary to achieve this objective.

Free as in beer or free as in speech?

Graham Greenleaf speaking at the Institute of Advanced Legal Studies, London, in January, touched upon what we actually mean by ‘free access’ and how the concept fits in to our assumed values of liberty, democracy and the rule of law. Those aspects which relate to rule of law are interesting on several levels; does making legal information more accessible make justice more accessible?

Some commentators have asked whether UK case law should be made accessible in the same way as UK legislation, but Greenleaf questions this: ‘If the rule

¹³ Practice Direction (Judgments: Form and Citation) [2001] 1 WLR 194

¹⁴ Important legal notice (Eur-Lex) <http://eur-lex.europa.eu/en/editorial/legal_notice.htm> accessed 07 March 2012

¹⁵ Claire Germain, Digitising the World’s Laws in Richard A. Danner & Jules Winterton (eds), *The IALL International Handbook of Legal Information* (Ashgate, 2011) p.194

¹⁶ Editorial, ‘Courts: judgment day’ (Guardian, 25 September 2011) <<http://www.guardian.co.uk/commentisfree/2011/sep/25/criminal-justice-uk-digital-database>> accessed 08 March 2012

¹⁷ Nick Holmes and Sir Henry Brooke, ‘Judgment Day for BAILII’ (Society for Computers and Law, 2011) <<http://www.scl.org/site.aspx?i=ed22972>> accessed 08 March 2012

of law belongs to citizens, not the State, access to law in ways not controlled by the State is clearly desirable, perhaps essential'.¹⁸

The main driver for wanting to open up the law is that anyone should be able to find the law as it stands at the present time. The principle of 'ignorance of the law is no excuse' can be traced back to Roman times, and yet in 2012 we find ourselves in the position that access to the primary legal materials of the UK to those without a subscription to a commercial legal database is fairly patchy. A member of the public with no legal experience would find it extremely difficult, verging on impossible, to look for both the case law and legislation relating to their particular situation and be sure they had all the information required. We could go further and ask whether it is even enough to simply provide access to the law? How can it be made understandable too?

Legal blogs have made inroads here, and offer those interested in legal developments, whether breaking cases, new legislation or legal reform and provide a place not only to gain this understanding but also to engage through comments. Law becomes accessible via the excellent critique offered by bloggers like the writers of the UK Human Rights Blog, The Small Places, PinkTape, Head of Legal and Nearly Legal. 'Current Awareness' sites like the one provided by the Inner Temple Library also play a big role in flagging up these legal developments, and the microblogging tool Twitter has had a significant impact on how such developments are disseminated. Our access to legal materials online for free is certainly improving, but our view of the landscape is far from panoramic.

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¹⁸ Graham Greenleaf, 'Free access to legal information: roles in the expansion of liberty, democracy and the rule of law' (IALS lecture, 17 January 2012) Video and slides available <http://ials.sas.ac.uk/news/Graham_Greenleaf_at_IALS_2012.htm> accessed 11 March 2012

Websites mentioned in this article

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- AustLII <http://www.austlii.edu.au/>
- BAILII <http://www.bailii.org/>
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- CommonLII <http://www.commonlii.org/>
- Current Awareness from the Inner Temple Library
<http://www.innertemplelibrary.com/>
- CyLaw <http://www.cylaw.org/index-en.html>
- DOAJ <http://www.doaj.org/>
- EISIL (Electronic Information System for International Law)
<http://www.eisil.org/>
- EUR-Lex <http://eur-lex.europa.eu/en/index.htm>
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