

Access to the Law in Australia: The Commonwealth Parliamentary Library's Contribution¹

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It is often said that the effective working of a representative democracy depends on the availability of adequate information and the capacity for its independent evaluation. Such access, it is argued is a major contributor to restoring the significance of the Parliament.³ Similarly there is a commonly held view that access to justice depends on the laws of the Parliament and the courts being freely available to everyone.

At the other end of the spectrum, there is another view that information is a valuable economic asset to be exploited fully and that primary legal materials are a state asset which governments have the right to sell in order to recoup some of the cost of maintaining the legal system.

In Australia, in a period of less than ten years, there has been a dramatic shift across this philosophical spectrum. From a situation in the early 1990s, when legal information was prohibitively expensive and consequently only accessible to a small minority, Australia by 1996 emerged as a world leader in the provision of freely accessible public legal materials. Due mainly to the efforts and advocacy of an academic institution called the Australasian Legal Information Institute (AustLII), Australia can now boast that legislation from all jurisdictions, both Federal and State, is freely available via the Internet. Increasingly decisions of courts and tribunals as well as parliamentary debates, bills, parliamentary papers, government documents and treaties are also available in this way.

International recognition of Australia's efforts has been forthcoming from the United Kingdom Court of Appeal, where Lord Justice Saville in his opening remarks in *Bannister v SGB PLC* commented:

If this country was in the same happy position as Australia, where the administration of the law is benefiting greatly from the pioneering enterprise of the Australasian Legal Information Institute we would have been able to make this judgment immediately available in a very convenient electronic form to every judge and practitioner in the country without the burdensome costs that the distribution of large numbers of hard copies of the judgment will necessarily impose on public funds.⁴

¹ Paper presented at the American Library Association Annual Conference, June 25-30 1999, New Orleans

² The views expressed in this article are those of the author and may not be attributed to the Information and Research Services (IRS) or to the Department of the Parliamentary Library. Readers are reminded that the paper is not an official parliamentary or Australian government document.

³ Jones, Barry *Sleeper's Wake! Technology and the Future of Work* Melbourne: OUP, 1990 at pp 246 and 252. Verrier, J.R. *The Future of Parliamentary Research Services: To Lead or to Follow*. Paper prepared for the IFLA Conference, Istanbul, August 1995.

⁴ In *The AustLII Papers*. Background papers for the Law via the Internet '97 Conference. 25-27 June 1997 at p 15.

With this background in mind, the purpose of this paper is to focus on the Australian Commonwealth Parliamentary Library ('Parliamentary Library') and its contribution to the provision of freely available legal information. The paper begins by examining the Bills Digest Service of the Parliamentary Library and assessing its role in enhancing the democratic process. It continues by discussing the Library's innovative Internet publishing program and finally raises some of the issues of principle which need to be determined to enable the new technologies to be used to their fullest potential.

PART I: THE BILLS DIGEST SERVICE

The Parliamentary Library serves both Houses of the Australian Parliament, the House of Representatives and the Senate. With a staff of approximately 200 the Library seeks to provide quality information services, analysis and advice, to Senators and Members.

A significant and highly valued part of this service⁵ is the Bills Digest Service. Begun in 1976 the Service was introduced to provide a brief summary of the main provisions and purpose of each Government Bill before the Parliament. Initially for the Presiding Officers and Committee Chairpersons, the service was quickly extended to all Senators and Members.

Reflecting the increasingly busy legislative program of the Parliament, the Service produced 239 Bills Digests ('Digests') in 1997/98⁶, the highest figure since the Service started in 1976. Indicative of the greater analysis and research provided, Digests are now more substantial averaging some 3,000 to 15,000 words, compared to the approximately 1,000 word documents of earlier years. The more detailed, complex or significant the Bill, the larger the Digest. In essence, Digests provide a plain English summary of Bills and detail their purpose, background and main provisions. Such a service provides an independent and timely perspective on all Government legislation complementing the legislative material provided by the Executive. Digests are also written for the more important private members bills such as the Kevin Andrews Euthanasia Bill of 1996⁷.

There is an abundance of authority pointing to the ever increasing dominance of the Executive and the corresponding decline of Parliament in Westminster systems of government.⁸ Whereas the US system of Government is characterised by a clear separation between the executive and legislative arms of Government, in Australia, the Government is chosen from the majority party within the House of Representatives and parliamentary debate has become increasingly dominated by disciplined political parties.

There are, however, a variety of forces challenging this power of the Executive. The development of a sophisticated and effective parliamentary committee system, the increased assertiveness of the Senate with its proportional system of representation, are well

⁵ The author acknowledges that other parts of the Information and Research Services Program also provide significant and valued services to Senators and Members in terms of individual client requests and general distribution products. See Department of the Parliamentary Library, *Annual Report 1997-98* at pp 11-30.

⁶ *Id* at p. 24.

⁷ *Bills Digest No 45, 1996/97*

⁸ See Lovell, David *The Sausage Makers? Parliamentarians as Legislators* Canberra, Department of the Parliamentary Library, 1992.

documented examples of ways of restoring the Parliament to its rightful place.⁹ Within the Australian Parliament, the Parliamentary Library's Bills Digest Service, along with other products of its research service, is another significant element that can contribute to restoring some balance between the Executive and the Legislature. Whilst having a less public profile than the committee system, the Digest Service nevertheless assists the Parliament in its role of scrutinising legislation. It can therefore be argued that, in this way it contributes to the democratic process in Australia.

The Digest provides a rigorous and independent legal analysis of almost all Government Bills and in so doing may, for example, find technical drafting errors. Sometimes the Digest also finds omissions or errors in the Government's Explanatory Notes or highlights discrepancies between the Explanatory Memorandum, the Bill and the Minister's Second Reading Speech.¹⁰ A case in point is the current Australian Security Intelligence Organisation Legislation Amendment Bill 1999, the purpose of which is to review the powers and functions of Australia's major security organisation, the Australian Security Intelligence Organisation, known as ASIO. The Digest raises questions of why the Government's Second Reading Speech and Explanatory Memorandum fail to refer to a particularly significant and relevant report relating to encryption.¹¹ In making this observation the Digest is not necessarily suggesting a secretive motive on the part of the Government. Rather its intention is to scrutinise the provisions carefully and to provide a balanced presentation of all sides of the debate. The Digest is an acknowledgment that the Government's point of view can not of necessity reflect the full range of public policy issues involved in a particular legislative program

The analysis provided in Digests can also give Opposition parties the authority or the evidence to negotiate the procedural path of a particular Bill through the Parliament. Depending on the issues and questions raised in the Digest, or, indeed, elsewhere, Opposition parties may pressure the Government to send a Bill to a committee for further consideration, or they may convince the Government that a Bill raises controversial issues that need more time for debate. Such a Bill is the Criminal Code Amendment (Slavery and Sexual Servitude) Bill 1999 currently before the Parliament. While the opposition parties are in agreement with the general tenor of the Bill, they are proposing amendments that address some of the issues raised in the Digest¹² Consequently the Bill is no longer listed for rapid passage as a mechanical or non-controversial Bill. Instead it will now proceed through the Parliament with more time allowed for debate.

To suggest that the Digest is written for opposition parties is too simplistic and would ignore the use made by the 'internal opposition' on any issue within the governing party or parties.¹³ The researcher in examining the Bill, comments, analyses and distils a range of community views and policy concerns and presents them for parliamentarians' consideration. In this respect the Digest process resembles the committee system which, by a process of public hearings, seeks out community views on a particular issue. However,

⁹ For a general discussion of the role of Parliament in the Australian political system see David Lovell *Ibid*

¹⁰ For example Health Legislation Bill 1997. *Bills Digest* no 114. 1997/98 at p 4.

¹¹ *Bills Digest* no 172. 1998/99 at pp. 4-5

¹² *Bills Digest* no 167. 1998/99 at pp. 6-8.

¹³ Over 94% of Senators and Members elect to receive the printed copy of Digests. with the remainder preferring to obtain their copies from the Internet as required

sometimes the sheer volume of evidence before the committee and the heavy workload of busy committee members may limit the scrutiny or analysis undertaken. Also, sometimes the committee process may be too late for the parliamentary debate.

The strength of the Digest is that it can succinctly present a complex and substantial range of views and it provides this informed effective input before the legislation is passed. Digests give the Parliament another alternative and they are, in a sense, a combination of all processes. They often expose technical problems with the Bill, they distil a range of materials and bring together in one place a summary of the committee recommendations. In the cases where the Digest appears before the committee process begins, it also assists by providing important background material for committee members. Digests therefore both feed from, and into, the committee system. This was noted in the Senate Legal and Constitutional Legislation Committee's report on the Native Title Amendment Bill 1997 which acknowledged that the first chapter of the report was primarily extracted from the Bills Digest.¹⁴

The debate surrounding this Native Title Bill was one of the central features of the Australian political and parliamentary scene during 1997-98. For this legislation the Library produced two very substantial Bills Digests.¹⁵ The value of the first Digest was in providing background to the complex and technical issues relating to native title property law and presenting a balanced summary of the highly polarised interests involved. These interests included the rural land holders and mining concerns on the one hand and the native title interests of indigenous communities on the other. The value of the second Digest, which appeared after the Bill had received substantial amendment in the Senate, was in methodically distilling and analysing the proposed amendments and focusing on the major areas of contention still to be resolved. Significantly, at the end of the longest debate in the Senate's history, when the Bill was finally passed, the Opposition spokesman on indigenous affairs recorded his indebtedness to the main researcher involved in writing these two Digests.¹⁶

The Digest also enhances the quality of debate for Government members as well as Opposition. To the backbencher of all political parties, the heavy demands of constituent work, the increasing volume and complexity of the Parliament's legislative program and the limits of a small staff make the task of debating obscure and often technical legislation extremely daunting. The Digest assists parliamentarians of all political persuasions to participate intelligently and at short notice in parliamentary debate on technical and specialised Bills about which they may have little knowledge or background.

An essential part of the Digest is its timeliness. A well crafted and extensively researched document available only after the passage of the Bill through the Parliament is of no value to the debate. Consequently the often frenetic attempt by the Executive to push legislation through the Parliament can place almost impossible demands on the Bills Digest Team. During the recent war in Yugoslavia, the Australian Government committed to accepting

¹⁴ Senate Legal and Constitutional Legislation Committee, *Constitutional Aspects of the Native Title Amendment Bill 1997* November 1997. In Senate Legislation Committees. *Report on the Consideration of Bills* vol. 3 at p. 153.

¹⁵ The Native Title Amendment Bill 1997. *Bills Digest* no. 51 1997/98 was an 83 page document and the Native Title Amendment Bill 1998 [No. 2], *Bills Digest* no. 171 1997/98 a 45 page document.

¹⁶ Australia. Senate. *Official Hansard* 5 December 1997 at p. 10587.

Kosovar refugees and therefore needed to legislate quickly to stipulate the conditions of the refugees' entry into Australia. The particular Bill was introduced into the Parliament one day and set for debate the following. The somewhat harried Library researcher received the Bill at 11.00 am and by 7.00 pm that evening a seven page Digest was available on the Internet. Notably, one speaker on the Bill quoted the Digest into the Hansard record to support her concerns that certain provisions in the Bill might contravene Australia's international treaty obligations in relation to refugees.¹⁷

This discussion does not suggest that the Government's legislative program is jeopardised by the Digest Service. Indeed, to take such a role would be to misunderstand the meaning of the parliamentary process. Amongst its many roles, Parliament is more a scrutineer or watchdog¹⁸ than a decision maker, and the Digest can improve the quality and depth of that scrutiny. Occasionally it can be argued that amendments to Bills are made on the basis of the Digest Service, but its greater value is in bringing issues of public policy into the open which may otherwise be ignored, thereby enriching the Parliamentary debate. It gives opposition parties the added ability to challenge Bills and seek amendments which otherwise they may not be able to do. It is for these reasons that the Service can be seen to contribute to the democratic process and to provide increased access to the legislative process.

Evidence from the Hansard record suggests that the value of the Digest service has increased in recent years, perhaps reflecting the provision of more in-depth and substantial analysis. There is also evidence to suggest that parliamentarians incorporate the text of Digests into their speeches without acknowledgment. However, recently, Members and Senators have more publicly acknowledged their reliance on the Digest in the Parliament.

A case in point is the current debate relating to tax reform and the introduction of a goods and services tax (GST). Due to the nature of Australian politics, much of this debate is focused in the Senate where the balance of power is held by the smaller parties and independent Senators. In that debate, Independent Senator Brian Harradine, on whose vote the Government was relying to pass the whole raft of GST Bills, suggested that there were possible constitutional problems with some of the proposed GST legislation. In expressing this concern, Senator Harradine publicly acknowledged his indebtedness to the relevant Bills Digest.¹⁹ An interesting postscript to this incident is that the Government at the time of writing²⁰ has refused to release its legal advice on this issue. However a very recent media report suggests that a copy of this confidential advice, obtained by the Australian Financial Review, would indicate that there are indeed constitutional questions surrounding these Bills.²¹

Many of the public acknowledgments of the Digest Service in the Hansard come from independent and smaller party parliamentarians. To them, the Digest provides a counterbalance to the vast resources of the bureaucracy and the political party machinery on which the major parties rely.

¹⁷ Australia Senate, *Official Hansard* 29 April 1998 at p. 4553

¹⁸ For a discussion of the role of a scrutineer see Lovell David *The Sausage Makers? Parliamentarians as Legislators* Canberra, Department of the Parliamentary Library, 1992.

¹⁹ Australia Senate *Official Hansard* 27 October 1998 at p. 4279

²⁰ June 1999

²¹ "Government Solicitor queries GST legislation" *Australian Financial Review* 11 June 1999 at pp 1,4

Preliminary findings from the Parliamentary Library's Current Client Services Evaluation have also provided significant feedback on the value of the Digest Service. Many clients interviewed about services, acknowledged their 'heavy reliance' on the Bills Digest Service and perhaps more significantly complemented it for its objectivity and impartiality.²²

A fundamental operating principle of the Parliamentary Library is its commitment to objective and non-partisan services and this principle permeates the Bills Digests Service. However, as one commentator suggests, to be objective does not necessarily mean to be non-critical, and to be non-partisan does not imply that the researching of controversial issues must be avoided. If a research service is too bland, it is likely to fall short of giving full satisfaction to its clients.²³ Similarly if the Bills Digests Service is to be of the maximum use to the parliamentarians it serves, it must be prepared to assist them in presenting the policies, arguments and points of view they wish to promote.

In the context of a meeting of the library profession, it is of interest that Bills Digests are written by a range of differently qualified staff including leading academics and researchers, qualified lawyers, and more recently by librarians with appropriate subject expertise. This involvement of librarians is indicative of a gradual blurring of the traditional division between the work of information gathering and research analysis.

In the Australian Commonwealth Parliamentary Library this melding of professions has been encouraged by the recent restructure of the information and research divisions which has involved the successful integration of librarians and researchers into single subject specific teams. Initiated primarily to provide an enhanced and more seamless service to Members and Senators, this restructure has had the additional benefit of enriching the two professions. It has enabled librarians to develop writing and analysis skills to enhance their more traditional work of searching, gathering and distilling information. Researchers or lawyers, on the other hand, also benefit from working more closely with librarians and developing skills in the new electronic searching technology which is so vital to their writing and analysis.

PART II: THE PARLIAMENTARY LIBRARY'S INTERNET PUBLISHING PROGRAM

In 1996, the Parliamentary Library took the somewhat courageous lead amongst legislative libraries and began publishing the full text of its General Distribution Research Papers including Bills Digests on the Internet. It was a courageous and enterprising move because it was done before Australian parliamentarians had access to the Internet and it was done at a time when the possible impact was still unknown and when Internet technology was less sophisticated than it is now. Arguably it was done out of a sense of community obligation based on egalitarian principles that democracy will flourish where there is a free flow of information.²⁴ Legislative libraries in other jurisdictions have more recently

²² Results of this evaluation will be published in the Department of the Parliamentary Library's Annual Report for 1998/99

²³ Laundy, Philip, *Parliamentary Librarianship in the English-speaking World*. London, The Library Association. 1980 at p 97. In Finsten, Hugh, *The Parliamentary Research Branch of Canada's Library of Parliament*. Ottawa, Library of Parliament. 1998 at pp 11-12.

²⁴ There was also a view that the Library has always published its General Distribution papers in hard copy and Internet publishing is no more or less than publishing in another form.

followed Australia's lead, although to date,²⁵ the US Congressional Research Service still opposes this move

The Parliamentary Library's Internet publishing program is substantial. Its web page contains the full text of wide ranging papers including Research Notes, Current Issues Briefs, Research Papers, Bills Digests and Monthly Economic and Statistical Indicators, along with excerpts from the Parliamentary Handbook and other Library publications. It also provides research guides to Internet resources, such as the Guide to Australia's Political Parties on the Web.²⁶ The research papers on the web address current issues before the Parliament such as euthanasia, the referendum on whether Australia should become a republic and tax reform. Essentially this publishing program places in the public domain scholarly commentary on a range of issues that are of immediate concern to the Parliament and community and in a practical way provides greater access to the law in Australia.

While some legislative libraries still have philosophical objections to Internet publishing,²⁷ the Australian Parliamentary Library believes that the benefits far outweigh any potential difficulties. In May 1999 there were 175,755 direct Internet hits on the Library's web site and the general outcome of this access has been positive. It has not drawn resources from the Library's primary work of serving Members and Senators, nor has it restricted or affected the content or style of its publications.²⁸ Increased enquires from the public have not strained resources, as often those enquires can now be answered by a referral to the Library's web page. This is a more useful response than suggesting 'try your local library'

While there have been isolated examples of intimidating calls from extremists regarding more controversial papers, the Library has responded by setting in place procedures to protect its staff from harassment of this kind. Furthermore, these isolated examples are possibly no more than any public institution may expect.

Against this, one has to balance the positive impact of improving the profile of the Library and more importantly, of the Parliament, and increasing the community's understanding of significant issues before the Parliament. Placing publications in the public domain can only enhance the public perception of the Parliamentary Library and make the larger community more aware of what resources are available to assist Senators and Members in their work. The Library's web page and its useful resources are also a way of sharing and reciprocating information with organisations and people on whom the Library often depends very heavily.

The Australian Parliament has a strong commitment to its community service obligations and aims to provide the community with information about Parliament.²⁹ The Library's

²⁵ June 1999

²⁶ The full text of all original General Distribution Papers is available on the Internet at www.aph.gov.au/library

²⁷ According to June Verrier, the Congressional Research Service's reluctance to put their material on the Internet is partly due to a fear of a diversion of resources by the need to respond to public inquiries or suggestions and, too, a fear that not just the focus of effort but its style may need to be changed if CRS material is to be in the public domain in this fashion. See Verrier, J R. *Seminar on Comparative Legislative Research Services Ottawa Canada 2 April 1998 Report and Paper on Australian Parliamentary Information and Research Service Approaches to Client Feedback* Department of the Parliamentary Library, 1998 at p. 6

²⁸ Id at p 5

²⁹ Ibid

Internet publishing program is one part of this obligation and significantly other parliamentary departments have been equally pro-active. The parliamentary web site began as a disparate number of sites reflecting the structure of five parliamentary departments but has now been unified. It offers a significant amount of useful material to those interested in the workings of the Parliament itself, as well as material on the substantive issues being dealt with by the Parliament.

Much of the parliamentary information now on-line was previously difficult to identify, and obtaining it also presented a challenge – the Parliament has a complex and sometimes obscure structure. By increasing access to this information, the Parliament has in an immediate and practical way, enhanced its democratic processes which, in order to flourish, depend on the availability of information.³⁰

During the 1997-98 year there were 2.254 million direct Internet access requests for Hansard material, nearly twice as many as in 1996-97³¹ indicating a clear and growing demand in the community for this information.

Greg Taylor, the Vice President of the Electronic Frontiers Australia ('EFA') comments:

... as far as Parliament goes, the site is one of the best in the world in terms of government information availability. Hansard is available early the next morning after sessions in both houses, and there is a host of other useful information there. Before the Net, Hansard and the Parliament was more or less inaccessible to the population at large without considerable effort. Now it is all accessible in an amazingly timely fashion. EFA could not research issues properly without it.³²

Other lobbying groups have also found the Parliamentary site useful. For example, Alison Aggarwal, a spokesperson for Australians for Native Title and Reconciliation (ANTaR) a major lobby group dealing with indigenous issues, has commented:

... the capacity to get up-to-date information on the Native Title Bill's progress through the Parliament was crucial to ANTaR's work as we followed the Bill through the Senate. Access to the Joint Committee's Reports on indigenous heritage has also been critical in the preparation of our submissions to the Committee.³³

CONCLUDING COMMENTS – FUTURE CHALLENGES

Australia and the Commonwealth Parliamentary Library have arguably been world leaders in the provision of freely available legal materials via the Internet. However this record of achievement should not give rise to complacency. Access to the law and the enhancement of democracy relates not just to the publication practices of institutions such as the

³⁰ In this part of the paper I am particularly indebted to Kirsty Magarey, a colleague in the Department of the Parliamentary Library, for reliance on her paper, "The Internet and Australian Parliamentary Democracy" 52 *Parliamentary Affairs* 404.

³¹ Department of the Parliamentary Library Reporting Staff, *Annual Report 1997/98* at p. 22.

³² Magarey, K. "The Internet and Australian Parliamentary Democracy" 52 *Parliamentary Affairs* 404.

³³ *Ibid*.

Parliamentary Library. For Australia to fully utilise the information and communications technologies for the advancement of democratic practices there are still significant challenges that must be addressed

A serious anomaly in this discussion is that in Australia the some 250 geographically dispersed federal electorate offices still do not have Internet access. This is due mainly to the significantly lower bandwidth available in electorate offices and the costs of providing Internet access over vast sparsely populated geographic distances.³⁴ For the Parliamentary Library this raises a simple question of propriety: Should a Bills Digest written for Senators and Members be available to the public via the Internet before it is available in a Member's electorate office?

Australia is not excluded from the debate about the potential exacerbation of social inequalities through the Internet. It is true that Internet technology has been taken up with a high degree of enthusiasm in this country. The US based Internet Industry Almanac estimates that on a numerical basis, in the year 2000 Australians will be among the top 10 users of the Internet worldwide. For a country with a relatively small population, this is remarkable. Use per capita figures indicated that Australia ranked in the top five countries of the world. However this enthusiastic adoption of the technology by some Australians should not obscure the reality that a large majority of the population do not have access to the Internet and that patterns of access reflect the socio-economic status of users - those who have access are generally more affluent.³⁵ This disadvantage also extends to those remote from large population centres where telecommunications are cheaper and easier to access. In this environment, can the Parliamentary Library with its Internet publishing program be accused of empowering the already affluent and excluding the marginalised in the community?

Electronic and participatory democracy in Australia still plays a minor role in Australian politics.³⁶ However should e-democracy become more significant, will the Parliamentary Library then be more pressured to engage in debate relating to the publications it places in the public domain?

Of course questions of fostering Internet access by addressing problems of bandwidth, cost, standards and education are essentially beyond the control of the Parliamentary Library and even the Parliament. They require the resources and commitment of governments

Perhaps a more immediate challenge for the Parliamentary Library comes from within the Parliament and from its own clients, the Senators and Members. Preliminary findings from the current Department of the Parliamentary Library Client Services Evaluation³⁷ showed that a clear and dominant theme of the research is the influence of the Internet on

³⁴ However funding has recently been allocated by the Department of Finance and Administration for the provision of the Internet in electorate offices.

³⁵ According to the Australian Bureau of Statistics study of the *Use of the Internet by Householders*. November 1998, the proportion of households with home Internet access increased with household income. Nearly 42% of households with incomes greater than \$66,000 had home Internet access whereas the level of home Internet access fell below 10% for household with incomes below \$27,000

³⁶ For a fuller discussion of the impact of the interactive capabilities of the Internet and their impact on democracy in Australia see Magarey K. *The Internet and Australian Parliamentary Democracy* 52 *Parliamentary Affairs* 404.

³⁷ Results of this evaluation will be published in the Department of the Parliamentary Library's Annual Report 1998/99

clients. The Net is clearly becoming an important part of the mix of suppliers and sources on which Members, Senators and their staff are calling. While the research showed that the Library remains a highly valued and respected institution whose skills, experience and professional expertise is constantly adding value to the work of Senators, Members and their staff, undoubtedly the Internet technology is dramatically effecting clients perceptions and relationships with the Library.

Obviously the Internet is likely to play a large part in at least reconfiguring some dimensions of the Library's traditional work in information and research services and in suggesting some new areas of potential service and support. It raises questions of what is the kind of 'value adding' that clients expect from the Library and does the Library have the right mix of skills, systems and services to meet those expectations? If the Parliamentary Library is to remain effective and of value then it should respond strategically in thinking about its future and role in serving Members and Senators in this new virtual world.