Legal Resources in the New Millennium: Tardis or Domesday?

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One of the features of the 8th Asia Pacific Specials Health and Law Librarians Conference, held at Wrest Point in Hobart from 22–26 August 1999, was the inclusion of focus sessions These sessions gave delegates the opportunity to participate in the discussion. The Law Forum, entitled "Legal Resources in the New Millennium: Tardis or Doomsday?" attracted over one hundred participants on the Monday afternoon of the Conference. The Tasmanian ALLG, with the help of Frieda Evans, Convenor of the Northern Territory Group, has summarised the session to provide feedback for those who attended and give those who weren't able to be at the Conference an outline of the issues raised.

Introduction

In the 11th century William the Conqueror set about recording all the information he could about his new subjects. His servants traveled the length and breadth of England in this attempt to "know everything" Today as we approach the 21st century, we know that we cannot know everything and that the Internet will often land us in very strange places as we travel in our own versions of the Tardis in quest of new legal information resources

Panel Discussion

Six speakers were given two minutes each to speak on what they saw as the main issues relating to legal resources as we go into the next millennium. These are summarised below:

- **Mr Justice Underwood** of the Supreme Court of Tasmania: Law reporting as we have always known it will not exist in the new millennium With all judgments available electronically, publishing will only be a commercial venture. Councils of Law Reporting will disappear as will authorised reports.
- **Professor Mickie Voges**, Chicago Kent College of Law: Authentication is overrated! In the past we could look to the authority of the court or publisher for the authority of judgments In the context of the Internet is it as big an issue as is being made out? Mechanisms have not yet been worked out but it will soon sort itself out.
- **Val Haynes**, tasInLaw: Until now there have been three main players in Australian legal publishing This is now being challenged in relation to primary materials Smaller publishers are moving in and the courts are supporting the public's right to free access with no copyright restrictions. It will probably be 20 years before the Internet really works for delivery of legal information – in the interim CD-ROMs will supplement Internet usage. In the field of publishing there will be further alliances between publishers and universities.
- **David Grainger**, SCALEplus: the Web is being used as a data-dump It is forcing recognition that primary materials should be in the public domain. Information technology skills are required to manage and serve up these materials. At present there is a major struggle to develop adequate and acceptable standards The next big challenge

is to make access to the huge dumps of data useful by the development of educational tools and the provision of functional indexes.

- **Francis Johns**, Lexis: Pathways on the Internet are needed. The Tardis is getting lost in time travel (the 1990s equivalent of Dr Who's police box would be a Portaloo). Publishers, including Lexis, are beginning to create pathways to guide their users through the information maze. There is also an increasing integration of all elements of law, so that legislation/cases/commentary are no longer seen as single entities but are fused into one product. Functionality should mimic the way people work. While it is possible for smaller players to enter Internet publishing, it is the large commercial publishers that have the resources to invest in continuous development of the technology.
- **Jane Treadwell** – Know Where, N Z.: While the public should not have to pay for access to legal information such as legislation and judgments, there is nothing wrong with the profession having to pay. Paying for a service should guarantee quality, timeliness and a structured format. The publishers are also answerable for what is produced if it is paid for, unlike free systems such as AustLII.

Following these short presentations, the delegates divided into groups for discussion. The panel speakers joined the groups for this. Each group was asked to produce up to three questions on the topics of:

- Law Reports/Judgments
- Legislation
- Law Publishing

These questions and responses are summarised below. Unfortunately the allotted time of 90 minutes made it impossible for all questions to be addressed during the Forum.

Law Reports/Judgments

1. Why do we need authorised reports? If there aren't going to be authorised reports, should the judges be indicating which judgments are important (ranking them) and which aren't?
2. Why don't all judges attach standardised catchwords for each judgment?
3. What would be the role of case citators if we do not have authorised reports?
4. Do you see that in the future all cases will have equal authority – reported or unreported? If this is the case how do you select from the range of cases available?
5. In respect of authorised reports, these were the "important" judgments – how do we now determine which are the leading cases, etc., if there are no longer any authorised reports?
6. If authorised reports as we know them disappear how will that affect the doctrine of precedent?
7. How can you ensure the currency of unreported judgments on the Net? How can you guarantee that the judgment you are looking at is the final correct version? How do you overcome the problem of authentication, when judgments are amended by the judges up to six months later?
8. How can we maintain the value of reports indicated by their choice for publication in authorised reports? Is there some sort of peer rating system possible?
9. Is there a future for all the specialised sets of law reports? (the ALRs, CLRs, A Crim Rs)

Summary of responses

The discussion generated by the questions relating to authorised reports and reported and unreported judgments raised a number of issues Opinions varied about what should be reported. In some jurisdictions judges mark their judgments as "reportable" or "do not send for reporting" Some panel members and delegates felt that judges should not have the final word as this could lead to judgments being excluded. It should be the decision of bodies such as the Councils of Law Reporting or the legal publishers

Some concern was raised about the possible demise of authorised reports, and the rise of a situation where all cases will have equal standing, whether they are reported or unreported The capacity to search electronically for words or phrases across a range of databases has the potential for people to rely on an obscure reference rather than determining what are the leading cases. The value of authorised reports lies in their being the "important" judgments If the publication of law reports is decided wholly in relation to making a commercial profit then there is potential for some less interesting cases to be passed over, and also for a proliferation of specialised series leading to some cases being published many times in different report series.

Conclusion

The increasing availability of judgments in electronic form raises questions about authentication, selection, legal research methods, over-publication and the role of case citation. These are issues that law librarians should be aware of and that professional groups such as the ALLG should be discussing with the commercial publishers, the Legal Information Standards Council, and the Councils of Law Reporting When bodies responsible for standards call for submissions the ALLG should ensure that its views and concerns are taken into account

Law Publishing

1. Should access to publishers web sites be by password or dedicated site?
2. Is there a future for "tailored" e-books?
3. How do you ensure equitable access to primary source material to both the public and user-pays consumers?
4. Why is electronic legal publishing so expensive for the subscriber when the costs of printing and distributing paper formats are so much higher?
5. Why should the cost of a subscription depend on the medium? Why are electronic subscription prices based on the number of users when a subscription to a loose-leaf is a one-off cost, regardless of the number of users?
6. Should the legal profession pay for "free to air" legal information? How should this be done?
7. With the lessening competition between publishers as publishing companies merge or disappear, what guarantees do we have as customers that we can rely on competitive prices, products, etc.?
8. Should there be recognition of the trend for users wanting legal resources to be a "one stop shop", ie finding the answer in one spot?

Summary of responses

Many delegates expressed dissatisfaction with the pricing structures and user restrictions associated with electronic subscriptions. The major publishers argue that the high cost of developing their systems has to be factored into subscription prices. The Encyclopedia Britannia argument (CD-ROM version now available for around $200 and since the Forum available free on the Internet or on subscription for an advertisement-free version) was held not to be a valid comparison by some of the publishers. Many delegates, however, remain skeptical and unconvinced about the need for the present pricing arrangements, arguing that the savings in areas such as printing, distribution and storage of print material have been ignored by publishers when setting prices for CD-ROM and online products. Some publishers have begun to address the concerns of librarians about the disparity in costs by allowing online access at no extra cost to those who have a print subscription. This was seen as a progressive step. It was also suggested that another solution would be for a publisher to place no restrictions on access to its products in a defined environment and charge for actual usage

Libraries should be negotiating with publishers for the best deal they can achieve Smaller libraries are disadvantaged as they do not have the bargaining power of the large law firms and academic institutions The solution for small libraries could be to become a member of a larger group or to organise consortia so as to be able to negotiate from a stronger position

Some delegates thought that the lessening competition between publishers as companies merge or disappear, would lead to less incentive on the part of publishers to be competitive with prices and products. However it was felt that the opportunities for smaller firms to move into niche markets with specially tailored products would prove an effective counterbalance to potential monopolies

Two other major concerns were the lack of guarantee of an archive copy when a CD-ROM or online subscription is cancelled and the restrictions on usage caused by passwords. In the past, libraries have been able to allow users to browse their collections, generally unaided and unhampered by restrictions. With the proliferation of pin numbers and passwords, and the exhortations of suppliers not to let anyone know your personal identification, many users become frustrated when they have to remember a number of passwords. There seems to be a perception by publishers that passwords are the only way to protect their products from being used by people who haven't paid for access.

Conclusion

There is a need for librarians and publishers to have open channels for dialogue about the publication of legal material in print, CD-ROM and online formats. More consultation between the two groups would be productive for both. Librarians are in a unique position to know what users need and want, while publishers, large and small, are developing new and innovative ways to package information At the same time there is a need for equitable access to primary resources by both the public and profit-making organisations

The Publishers' Liaison Group of the ALLG has been the conduit for librarians to contact publishers about problems with particular products. This has tended to focus on what was

wrong or unsatisfactory. The ANZ law librarians' list has also been used to air dissatisfaction and frustration. It would seem to be in the interests of both librarians and publishers to expand such discussion to look at how best to provide legal materials in the most appropriate format, at acceptable prices, in an environment that does not place unnecessary barriers in the way of the user.

LEGISLATION

1 While free public access to current legislation is generally accepted, can some investigation be done on ensuring access to historic data for strategic legislation, even if only on a user-pays basis?
2. Can expert systems assist in increasing public access to the government information relevant to them?
3. Will the increasing reliance on electronic access to legislation lead to an erosion of standards, e.g. practitioners relying on CD-ROM, Internet access for material which may contain errors but which can be accepted unquestioningly – because "it was on the Net"?
4 What authority can be provided for Internet versions of legislation?
5 Can publishers/vendors retain legislative historical data? e.g. Bills etc. once they become Acts?
6 Is the legislation on AustLII reliable, up-to-date and comprehensive?
7 How effective is the Internet for storage and delivery of legislation electronically?

Summary of Responses

A number of people expressed concern about the possible erosion of standards with practitioners relying on CD-ROM and Internet access to legislation. Delegates pointed to instances where the Internet version of a piece of legislation was incorrect. While there are disclaimers by providers that they do not accept responsibility for the content of their web material, there is an increasing tendency for printouts from these sources to be relied upon as being the authentic version of the legislation. Ultimately it is for the courts to verify the accuracy of legislation that is presented to them.

In the far off days of print only material, it was time consuming, but possible, to track amendments to legislation by working through the amending Acts. Some databases are now providing users with access to "point in time" searching that allows the user to retrieve the text of legislation in force on a particular date. However, amending legislation in these databases often appears only in skeleton form, i.e. the section number followed by the words "This amendment has been incorporated in the Principal Act." It was generally felt that insufficient attention has been paid to the need for access to historical data, particularly for those prepared to pay for such a service.

There is scope for small niche publishers to produce specialised products such as annotated acts and specific subject "point in time" products.

Conclusion

The main concerns for delegates were the accuracy of electronic sources of legislation and inadequate access to legislative historical data. There was general agreement that the

increasing availability of legislation from all jurisdictions, either from the big sites like AustLII or SCALEplus or from particular government web sites, has seen a great improvement in the ability of libraries to provide users with copies of legislation from all jurisdictions in Australia.

Did we achieve anything?

We certainly generated a lot of discussion both at the Forum and among delegates throughout the Conference. While the session was not structured to achieve any particular outcome, what seems to have emerged is the need for individuals and organisations to pick up particular issues and work at achieving co-operative arrangements that will benefit a wide range of participants. Institutions like AustLII and SCALEplus have done a tremendous job in making a wide range of legal resources available to the public. Librarians and publishers have benefited from the work of these two bodies.

It would certainly seem to be time for publishers and librarians to work more closely together. There is no point in librarians waiting for publishers to produce what they need for their users. They need to be actively engaged in dialogue with the publishing houses, large and small, about possible solutions. The ALLG, particularly the Publishers Liaison Group, is the obvious body to negotiate with publishers on these matters.

Electronic publishing has tremendous potential for producing specially tailored products from the large banks of electronic data now available, both free and on a subscription basis. Librarians have the expertise to become involved in this new area of niche publishing and should look at being active participants, both in print and electronic publishing, rather than waiting for someone else to do it.