

Free Access to Law - Origin, Development and Future

Andrew Mowbray
Professor of Law and IT
Co-Director, AustLII
University of Technology, Sydney

Origins of Free Access to Law

- Prior to the web there were many online legal information systems and numerous legal information products distributed on CD-ROM, but there was no significant provision of free access to legal information anywhere in the world.
- Both government and private sector online legal publishers charged for access. In some countries, like Australia, commercial online publishing had all but failed.
- Although very early initiatives relied on older technologies, the major impetus for change was the success of the Internet's World-Wide-Web which provided the necessary technical platform to enable free access to computerised legal information.

United States - Cornell “LII”

- The name “Legal Information Institute” was coined by Tom Bruce and Peter Martin when they established the original Legal Information Institute (LII) at Cornell in the United States in 1992.
- The initial system contained a number of databases primarily of US federal law (particularly the US Code and US Supreme Court decisions).
- ‘The LII’, as it became known, was the first significant source of free access to law on the Internet, and demonstrated that a free access service could provide both a high quality of document presentation
- There were very high rates of access from lawyers but particularly from non-lawyers

Australia - AustLII

- The *Australasian Legal Information Institute* (AustLII) was started by two Law Schools in Sydney, Australia, in 1995.
- It was established in response to the failure of the then Australian “monopoly” systems “Info One” and Scale.
- It borrowed the ‘LII’ suffix from Cornell, as others have done since.
- Early work involved bringing about policy changes by courts and government.

AustLII (Cont)

- AustLII's initial significance was that it was the first attempt world-wide to build a comprehensive national free access legal information system rivaling that of commercial publishers.
- It achieved "national" coverage by 1999.
- Today AustLII publishes 430 databases
- It receives around 800,000 accesses ("hits") per day and according the ratings agency HitWise, AustLII accounts for around 25% of all legally related internet traffic in Australia

Extending the number of LII's

- From 1999 AustLII started to use its search engine (**Sino**) and other software to assist organisations in other countries, usually with academic roots, to establish LIIs with similar functionality.
- The first of these was BAILII (the British and Irish Information Institute) in 1999/2000.
- It demonstrated that the AustLII model and software could be used in a general way for other jurisdictions.

PacLII

- In the late-1990's Bob Hughes and Robynne Blake started a project at USP Law School to publish Pacific Law on the Internet
- In 2000, AustLII assisted to convert the existing system to operate under the AustLII software and this was launch as PacLII
- It has become one of the most successful regional systems forming part of the Free Access to Law Movement

Canada - CanLII

- In 2000, the long-established **LexUM** team at the University of Montreal built the ***Canadian Legal Information Institute*** (CanLII).
- CanLII quickly became a very large national LII comprehensively covering Canada's federal system, matching AustLII in size and usage.
- LexUM initially used the Sino search engine but then adopting the open-source Lucene search engine and other development tools.
- Using these, they have developed **Droit Francophone** (2003), and with local partners developed Juri Burkina (2003) and JuriNiger (2007).

The development of other LIIs and regional and international “meta-LIIs”

- HKLII
- SAFLII
- NZLII
- CommonLII
- AsianLII
- WorldLII

Commonwealth Law Ministers Resolution 2005

- The Commonwealth Law Ministers Meeting in Ghana, October 2005 resolved: "Commonwealth Law Ministers welcomed the development of the Commonwealth Legal Information Institute (CommonLII). The Meeting noted that CommonLII is an Internet research facility providing free access to legal information from all Commonwealth countries. The Meeting encouraged all countries to cooperate in the development of CommonLII by providing, to the extent possible, access to their legal materials, including legislation, case law and law reform reports."

The Free Access to Law Movement (FALM)

- The Free Access to Law Movement (FALM) is a loose affiliation of legal information institutes.
- It meets annually if possible during the 'Law via Internet' Conference, and by email between Conferences.
- The FALM was formed at the 2002 'Law via Internet' Conference in Montreal, and adopted the *Declaration on Free Access to Law* (Montreal, 2002), sometimes called the 'Montreal Declaration'.
- Membership of the FALM is by invitation, with members nominating new candidates, and consensus required. The membership criteria are not fixed but involve adherence to, and support of, the Declaration and activities similar to (but not necessarily identical with) a LII.

The 'Law via Internet' Conferences

- The 'Law via Internet' Conferences have been the principal means by which cooperation between LII's has been established. The first was hosted by AustLII in 1997, as were the 2nd (1999), 3rd (2001) and 5th (2003). LexUM/CanLII hosted the 4th (2002), French organisations (as FrLII) hosted the 6th (2004), PacLII the 7th (2006), and LexUM/CanLII the 8th (2008). The 9th Law via Internet Conference will be hosted by ITTGG in Florence. Many of the conference papers are available online in an AustLII database (1997, 1999, 2001, 2003, 2005), on the FrLII website (2004), or on LexUM (2002, 2008) and comprise a considerable resource on legal information systems.

Montreal Declaration

Declaration on Free Access to Law

Legal information institutes of the world, meeting in Montreal, declare that:

- Public legal information from all countries and international institutions is part of the common heritage of humanity. Maximising access to this information promotes justice and the rule of law;
- Public legal information is digital common property and should be accessible to all on a non-profit basis and free of charge;
- Organisations such as legal information institutes have the right to publish public legal information and the government bodies that create or control that information should provide access to it so that it can be published by other parties.

Public legal information means legal information produced by public bodies that have a duty to produce law and make it public. It includes primary sources of law, such as legislation, case law and treaties, as well as various secondary (interpretative) public sources, such as reports on preparatory work and law reform, and resulting from boards of inquiry. It also includes legal documents created as a result of public funding.

Publicly funded secondary (interpretative) legal materials should be accessible for free but permission to republish is not always appropriate or possible. In particular free access to legal scholarship may be provided by legal scholarship repositories, legal information institutes or other means.

Legal information institutes:

- Publish via the internet public legal information originating from more than one public body;
- Provide free and anonymous public access to that information;
- Do not impede others from obtaining public legal information from its sources and publishing it; and
- Support the objectives set out in this Declaration.

All legal information institutes are encouraged to participate in regional or global free access to law networks.

Montreal Declaration (cont)

Therefore, the legal information institutes agree:

- To promote and support free access to public legal information throughout the world, principally via the Internet;
- To recognise the primary role of local initiatives in free access publishing of their own national legal information;
- To cooperate in order to achieve these goals and, in particular, to assist organisations in developing countries to achieve these goals, recognising the reciprocal advantages that all obtain from access to each other's law;
- To help each other and to support, within their means, other organisations that share these goals with respect to:
 - Promotion, to governments and other organisations, of public policy conducive to the accessibility of public legal information;
 - Technical assistance, advice and training;
 - Development of open technical standards;
 - Academic exchange of research results.
- To meet at least annually, and to invite other organisations who are legal information institutes to subscribe to this declaration and join those meetings, according to procedures to be established by the parties to this Declaration;
- To provide to the end users of public legal information clear information concerning any conditions of re-use of that information, where this is feasible;

This declaration was made by legal information institutes meeting in Montreal in 2002, as amended at meetings in Sydney (2003), Paris (2004) and Montreal (2007).

Making Free Access to Law Sustainable

- The main constraining factor of the non-government LIIs is funding: free to use, but not free to build.
- Every LII looks after the funding of its own system. The models on which LIIs are funded vary a great deal.
- AustLII has a 'multi-contributor' model, with nearly 200 institutional contributors, plus individual contributors (mainly lawyers). BAILII is similar in having multiple contributors, though fewer.
- CanLII is funded primarily by the Canadian legal profession, whereby every Canadian lawyer provides over C\$20 per year via their professional associations.
- International aid and development agencies have made significant contributions to the development costs of PacLII, SAFLII and AsianLII.
- Whilst funding constrains, good models can be made to work (as been demonstrated for more than a decade).

Conclusion and Future

- The Free Access to Law Movement is alive and well with over 28 members
- It is expanding with new systems such as MozLII, MalawiLII and ULII
- Most importantly, the LIIs are seen as part of the mainstream as sometimes the only source of legal information or in others as complementing commercial offerings

Conclusion and Future (Cont)

- One of the strengths of the Free Access to Law Movement has been the extent to which it has involved cooperation and support between its members and has built on cooperation with government, courts and other parties