

Online legal research

By Kim Alderson, LexisNexis.

Australian consumers and businesses are known to be early adopters of online and technology products. And highly educated professionals, such as lawyers, are usually leading the pack. As such, you are probably among the 95 percent of legal practitioners for whom conducting legal research online is now standard practice. But, are you using online research to its full advantage? Or could you be working smarter to get more from your research?

In its Legal Technology Survey 2004-05 the American Bar Association (ABA) reported that 91 percent of respondents conduct legal research online. Growing from 79 percent reported in their 2003 survey. A study conducted by LexisNexis, Australia's leading provider of legal information products and services, confirms the trend is also evident in Australia where 95 percent of legal practitioners conduct at least part of their legal research online.

The trend is most prevalent in case law research. In the ABA survey 71 percent of respondents indicated they conducted the majority of their case law research online. The most immediate benefit being the frequency with which content can be updated online. The two preferred¹ services offering online case law in Australia, LexisNexis' CaseBase Case Citator and AustLII, ensure users always have the most current cases and precedents available by updating with much greater frequency than a print equivalent could achieve.

WHAT MORE COULD I BE GETTING FROM MY ONLINE LEGAL RESEARCH?

The ease and frequency with which content can be updated is the first benefit a practitioner starting out with online legal research recognises. It is, however, just the tip of the iceberg in terms of the benefits to be gained. For those who are willing to invest in developing their search skills the benefits multiply.

This can be demonstrated by looking at the benefits in searching for case law. Online searching allows you to search across multiple jurisdictions in one action to return a complete list of cases. You can then easily sort your results by source or court to narrow the selections and link seamlessly between cases and the precedents cited without re-doing your search. In LexisNexis CaseBase you can even set the service to do the search for you, then receive the results via email on a regular basis to suit your own workflow needs.

The net result of the capabilities and features of these online research services is that you improve your business productivity by spending less time finding



information and more time using it.

WHICH SERVICES SHOULD I BE USING FOR MY ONLINE LEGAL RESEARCH?

One of the biggest hurdles to reaching these benefits is sifting through the plethora of information available to find what is relevant. You must select a search service/s that will deliver you the most accurate, on-point and complete results in the shortest time.

A January 2005 study² reported that there were 11.5 billion pages freely available on the Internet. It may surprise you to know that even the most popular of the general search engines cannot lay claim to offering a complete indexing of these pages. According to the study Google indexes just less than 70 percent, while the closest second is Yahoo at only 57 percent. This presents three questions:

- Is critical material being missed in the 30%+ of the Internet not being searched through these services?
- With legal terminology becoming more widely used in other contexts, how many of the results generated are irrelevant to your purpose?
- Is the information returned by a search still current, or was it posted long ago and never updated?

Local legal services, such as AustLII or Comlaw, have only a fraction of the total coverage Google can achieve. However, they provide more relevant coverage as the content they index is specific to the legal community. They deliver "more of what matters" to quickly find relevant answers within a legal context.

Then there are fee-based services, such as those offered by LexisNexis and other legal publishers of traditional print services, who have embraced this new medium. The information within these services sits below the surface web and cannot be captured by the general search engines. These services provide specific legal content needed to quickly find relevant answers to your legal research. Plus, they have the scope and resources to offer a broader range of content, valuable features like annotations and commentary, and provide support

to their users.

There are positive characteristics to all three types of services available and each has its place in conducting research. You should assess fit with your needs in terms of three factors to select the service that is right for your legal research – content, convenience and features.

EVALUATING SERVICES - CONTENT

Of the three factors we look at in evaluating a service, content is the most important. Without reliable, on-point content a service can be the most convenient and feature laden available, but still unusable in a legal context. To objectively evaluate a service on content you should apply the SMART principle widely used in the business community for setting objectives.

- **Specific** - Does the information available from the service comprehensively cover the subject of interest to ensure you are not missing facts important to your case?
- **Measurable** – Does the service provide guidance in understanding the value of legal source materials?
- **Accountable** - Does the service identify the primary source from which content has been reproduced, allowing you to verify its accuracy and credibility?
- **Relevant** – Does the service generate information directly relevant to your legal research? Or, does it pick up key words in unrelated subject areas?
- **Timely** - Does the service list the date a source was first published and last updated? This can be critical to a legal case.

EVALUATING SERVICES - CONVENIENCE

Convenience has been a significant catalyst for driving many to use online services in their legal research. Some convenience factors are common to all services, such as the ability to access information wherever you are working. With advances in lightweight laptop and Bluetooth technology content is becoming even more accessible in court, on client visits or in your home office.

Other convenience factors can vary significantly between services and these are where you should focus your evaluation.

- How much further effort is required to verify information generated by a service that is “conveniently” easy to search? The seeming simplicity of one interface may require further effort at the end to sift through output. While an interface that prompts for more input at the start produces a more effective search with targeted results.
- How much does a service provide? If the information generated by your search identifies other material of interest, can you link to that content through the service? Or do you need to go to another service to complete your research?

- How long do you have to wait for information to become available? The time a service takes to publish information online can affect the relevancy of your search. For example, Capital Monitor is able to provide complete Hansard by 10am the following working day.

EVALUATING SERVICES – FEATURES

Value-added features are the proverbial “icing on the cake” in selecting the service that best fits your online legal research needs. Having satisfied yourself that a service provides reliable, on-point content and delivers this content in the most efficient manner, you can look to what additional benefits are available. Some important features you may consider include:

- What assistance does the service provider offer to help you get started or deal with issues? Do they have an online help resource or a support team you can ring for help?
- Does the service provider give you training on how to get the most value out of their service?
- Does the service provide only raw data and unedited text or does it supplement the basic information with analysis to guide you on how the content can be applied?
- Can the service be customised to suit your needs? For example, can you create a shortcut to sources within the service that you wish to access most frequently?
- Can you save a search you use often to run again either at your command or even automatically at a pre-defined time?

HOW CAN I INTEGRATE ONLINE LEGAL RESEARCH INTO MY PRACTICE?

Based on your answers to these questions you can select the online service, or combination of online services, that is the best fit for your needs - now. But, with the evolutionary nature of technology, there are always greater possibilities.

The major trend observed in the US over the past few years has been towards integrating online services into a practice’s operations. LexisNexis has been at the forefront of this technology revolution, with a range of tools that allow you to integrate your own documents with online content.

In January LexisNexis released DynamicDocs, a document automation tool, in the Australian market. While document automation tools have been available for a number of years, DynamicDocs goes beyond the capabilities of its predecessors to provide research and productivity tools in one. The application guides you through completing prescribed and unprescribed forms with links to companion reference works for legislation and commentary. Then all the information you enter can be saved, recalled and used again with

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Practising Certificate Renewals

By Josephine Stone.

Section 22 of the Legal Practitioners Act stipulates that a legal practitioner shall not engage in legal practice unless they have a (current) practising certificate. This includes government employees.

In the Northern Territory all practising certificates must be renewed by 1 October. The Society sends out applications for renewal in the first week of September.

Practising without a certificate, even for a short period, raises a number of consequences.

First, the individual practitioner cannot recover any costs or disbursements in respect of any work of a professional nature. If such costs have been paid they are recoverable by the person who paid them.

Secondly, even if the practitioner has subsequently complied with renewal requirements, the practising certificate cannot be back dated to 1 October. The certificate can only date from the date the application is received by the Law Society.

Thirdly, the practitioner, and any clients, is without the benefit of professional indemnity insurance which has serious implications.

Fourthly, there is the conduct issue which can lead to disciplinary proceedings and, in serious cases, suspension or strike off proceedings. The obligation to comply is personal to each and every practitioner. Explanations of clerical or administrative error on the part of others do not excuse the personal responsibility of the practitioner.

Practitioners should be aware that delays in renewing the practising certificate will be treated by the Law Society as a complaint matter on the basis of practising without a certificate.

The following examples are taken from local and interstate cases.

EXAMPLE 1

Mr A is employed by a public agency. He has been admitted for three years. His employer's practice is to distribute, collect and pay for the practising certificates of all its employee solicitors. The application was not lodged with the Society until 14 October 2005, some two weeks after the due date and was only partially completed. The practitioner was contacted to provide additional documentation which he did on 28 October 2005. He was therefore without a practising certificate for four weeks. A complaint file was raised and the practitioner's conduct investigated.

EXAMPLE 2

Ms B is a sole practitioner. She has been in prac-

tise for many years. For the last three years she has taken annual leave around the time the certificate is renewable and has been late in her application for renewal, despite verbal reprimands from the Society. Following the last late renewal, a complaint file was raised and as part of its investigation the Law Society conducted an audit of all files current for the period the practitioner was without a certificate.

EXAMPLE 3

Ms C had taken maternity leave from a large private firm and was not due back until November. The application for renewal was sent to the employer in September. Her employer's practice is to distribute, collect and pay for the practising certificates of all its employee solicitors. The employer did not forward the application to Ms C at her home address and it was subsequently overlooked when she did return to work. The omission was discovered by the practitioner when she made enquiries with the Society concerning an unrelated matter in early December. A complaint file was raised and the practitioner's professional conduct investigated.

Online legal research cont...

any other DynamicDocs form or document. Significantly cutting duplicated effort and reducing the risk of human error in repetitive data entry processes.

Services that further extend on these capabilities are on the horizon. New product categories will be introduced that streamline workflows within practices, facilitate easier interaction with clients and other legal professionals, and allow real-time access to the courts. Alongside these new product categories you will continue to see the evolution of core research materials to deliver increased value to your legal research.

The legal practitioner who evolves with the technology will be the winner.

LexisNexis extends an offer for all readers of Balance to register for a free online trial of LexisNexis AU. All trials registered before 30 April 2006 go into the draw to win one of seven Blackberry handhelds. Visit: www.lexisnexis.com.au/bigcapabilities2 today! Terms and conditions apply

ENDNOTES

1. SOURCE: GCA (Global Competitive Assessment) 2005 Study, LexisNexis.
2. SOURCE: The Indexable Web, UniversitA di Pisa and University of Iowa joint study. <http://www.cs.uiowa.edu/~assignori/web-size/>