

# The Potential Of The Internet For Law And Legal Services

**Simon Rice and Sandra Davey outline how network technologies ranging from the Law Foundation's proprietary network to the Internet benefit both the legal profession and the public.**

## INTRODUCTION

### Networks generally

A stand-alone computer is as useful for communicating with others as is a typewriter or a letter. Connect two computers and the resulting 'network' might equate with the capacity of a telex in the age of typewriters: an active process is created. Quite simply, in modern communications systems, the network is more important than the computer: the computer is simply a tool used in the production and distribution of information. The computer is peripheral; what is most important is the network itself. Whether a local area network (LAN), a proprietary network like First Class or Lotus Notes, or a global network like the Internet, the network provides the framework for communications. It is in effect a technical parallel to a social network.

### The Internet

The Internet means different things to different people but certainly, at its simplest, it is a means of electronic communication that can convey either plain text messages - email, or hypertext and images - the World Wide Web. The exciting colour-and-movement developments have been with the Web, with hypertext, audio, images and animation. The more prosaic side of the Internet, its email role, is a well established phenomenon for many professions, but not for lawyers.

The impact of the Internet, as a social space, on workflow procedures, information access, social formation, politics, language and culture, has yet to be fully understood. Unlike traditional media mechanisms such as television and print, networks redefine participation in both consumption and production. Although traditional media technologies have attempted to encourage levels of participation, through talk-back and letters, they fail in their attempts to be inclusionary simply because of their inherent limitations. Electronic communications provide a framework

for active consumption, active production and, most importantly, active participation. For those who are connected, the Internet is currently the technology that can claim the greatest participatory possibilities.

Unlike other mass media, the Internet and other information-based networks are bidirectional: information flows both ways in the consumption and production process. This makes the Internet potentially more interactive and participatory than traditional media mechanisms. Further, it enables resource sharing, political networking, collaboration on joint projects, communications exchange and a potential reduction in costs.

It is bidirectional in two ways asynchronously and synchronously. In asynchronous communications such as electronic mail, people interact with each other on a one-to-one basis, or on a one-to-many basis, sharing ideas and opinions through mailing lists, discussion groups and bulletin boards. Individuals, groups of people and organisations are using these communication technologies in such areas as sharing information on current activities, holding and organising committee meetings, distributing agendas and minutes, working collaboratively on policy formulation, press releases and urgent submissions, creating special interest groups, offering support and advice, and as a central archiving mechanism for documents and publications.

Synchronous communications occur in real time, on a one-to-one, one-to-few and many-to-many basis, replicating the flow of a conversation of debate. Because they have a higher participatory and production value than existing media, synchronous communications have profound implications for the reconfiguration of workflow practices, social formation, community, the distribution of cultural and symbolic forms, politics and the construction of identity.

It is in this context that the text and practice of law, meets the Internet - email and the Web: how then can the Internet be used to enhance both access to law, and the practice of law?

## THE INTERNET IN LEGAL PRACTICE

### Public legal information

Law, whether legislation from Parliament, regulations and rules from bureaucracy, or decisions from courts and tribunals, is *public* legal information. We are presumed to know it. It is uncensored. It is public. It is applicable in every corner of Australia, and in many cases beyond. It is priceless, and no one should be in a position where they must pay money for access to it.

Emphasis here is on universality and equity of access to our laws: the Internet is not truly universal, nor is access to it equitably distributed across society, in a Western industrial capitalist society let alone throughout the greater part of the world. Nevertheless, no previous means of delivering information has ever had the potential of the Internet for such a degree of universality and equity.

### Should legal information be public?

If we want to ensure that public legal information is publicly available through out Australia, the Internet is a very powerful means of doing so. It may well be that we do not all have that desire; there are many arguments raised to counter the assertion that all people should have access to all law at all times. Many people, many institutions and a large industry are dependent on the fees that can be charged for expertise in law, and the principle of universal access to legal information seems to threaten that financial dependency.

Reinforcing the vested financial, professional and personal interest in preserving the domain of expert knowledge of law, is the argument that 'a little knowledge is a dangerous thing'; this argument runs in tandem with 'old law is bad law'. Both these arguments are

true - the law is complicated, and it changes rapidly. Neither, however, is a reason for depriving people of knowledge of the law, they are merely reasons for ensuring that the measures taken to give people access to the law are comprehensive, efficient and reliable.

To the extent that access to legal information will reduce a person's dependence on lawyers, without compromising a person's access to rights and remedies, lawyers may object; such objections in those circumstances can only be self-interested. It is the case however, that access to legal information will not always, or even often, enable people to do without lawyers without compromising their access to rights and remedies; lawyers will remain experts in their field, but will be dealing with better informed clients who will be able to give better instructions, rely less on the lawyer's discretion, and will demand higher levels of service.

The Liberal and National Parties' Law and Justice Policy (February 1996) recognises the principle of public access to public legal information:

#### **WINDOW ON THE LAW**

*Ignorance of the law is no defence at law. However, this most basic notion is increasingly at odds with the complex nature of our laws. It is essential that Australians have access to information relating to at least the basics of the legal system and the operation of laws that are most likely to affect them.*

*The complex web of laws and regulations are a mystery to most of our citizens, as are some of the fundamental principles. Some knowledge and understanding of the law is essential if we are to benefit from its protection.*

*Everyday, ordinary Australians come into contact with areas such as family law and criminal law. Unless they know how to find their way around a law library, a statute book, a law report or a legal text book it is difficult, if not impossible, to gain information without a lawyer. It is equally difficult to gain information about the court process, whether it be the Family Court or a State Magistrate's Court.*

*Modern computer and interactive technology provides significant scope to reduce the complexity of law and legal processes to an understandable and user-friendly format.*

#### **A Liberal and National Government will:**

- *commit resources to a project to be known as Window on the Law to ensure that all Australians have access to clear understandable user-friendly information about the legal system.*

#### **Window on the Law will:**

- *comprise a series of CD-ROM/interactive (or equivalent technology) products. It will produce a series of software products beginning with an overview of the Australian legal system. This will be followed by products targeted to more specific areas frequently encountered by ordinary Australians, such as family law and criminal law; and*
- *provide those with a legal problem or question with a fuller understanding of their rights and responsibilities and with knowledge of how to access the justice system.*

*The software will be made available as widely as possible to libraries, schools, legal aid and information centres. As far as is practicable, the information will be made available on the Internet.*

Equally, the Labor Party when in Government produced in May 1995 the Justice Statement, to similar effect at pages 128-136.

The Federal Government's resolve was tested in May 1996 when an ill-informed newspaper report, which was picked up uncritically by other news services, created public consternation at the availability on the Internet of Family Court cases. When the true picture eventually emerged - that what is on the Internet is only what has been published for years in hard copy and been publicly available - there was still concern that the 'scare' might cause undue caution in the Federal government in relation to Internet publishing. Far from it: the Federal government repeated its endorsement of electronic access to legal information, and fully supported the continuing provision of cases and legislation to the Law Foundation of NSW and to AustLII for publication.

#### **Some side effects**

Use of the Internet to distribute legal information for free is a challenge to our received notions of the form and

indeed ownership of legal information. The arcane world of statutes and precedents is now more open, but the deeper and broader understanding that legal practitioners have will never be indispensable. Nor will the value that commentators, authors and commercial publishing houses add to the text of statutes and cases be rendered irrelevant; those who add value to the raw text will now have to consider their market more carefully as the plain text becomes more readily accessible. Whereas once the text was not available unless it was purchased with the value added to it, the Internet is making the text available, and is challenging providers of secondary and explanatory material to better define their product and the markets for it.

In the same way that use of the Internet has focussed the minds of lawyers, publishers and commentators on the public nature of the base material with which they work, our use of the Internet has rejigged governments' understanding of their function, and of their relationship with the community. Previously, without the financial or technical means to promulgate their business, i.e. the law of the land, as widely and cheaply as the Internet can now do, governments could content themselves with selling their own packaging of the legislation through a limited number of outlets, and making it available to publishers to sell, with added value. Public publishing of the material has focussed government on its ability to speak directly to its community.

The Liberal and National Parties' Law and Justice Policy (February 1996) recognises this in its policy on Crown copyright:

#### **WAIVER OF CROWN COPYRIGHT**

*The retention by the Government of Copyright in legislation and related documents imposes an unnecessary cost or barrier to ordinary Australians wishing to access the law. A Liberal and National Government will:*

- *establish a Crown Copyright waiver scheme for legislation, transcripts and related documents so as to maximise access by all Australians and to reduce the cost.*

The Internet has similar implications for the Courts in relation to the public accessibility of their decisions. For institutions as distinctive and self-determining in their processes as courts are, exposure of their 'products', the judgments, to the world in raw,

unpackaged form is having some interesting effects. There is already a move to greater consistency in the form of the judgments that we are putting on the Internet, and a greater willingness to consider preparing and delivering judgments in a way that makes them more presentable and comprehensible from the start, without simply leaving it to the commercial vendors to enhance them.

The global nature of Internet research means that a decision of a single judge of the provincial court of Nova Scotia is as accessible as that of the full bench of the Australian Federal Court. Whether it is useful or even relevant is another matter, raising a curious question for the common law doctrine of precedent: universal publication has blurred the distinction between reported and unreported judgments, raising (or reducing) all court deliberations to the same level on that score.

### **USING THE WORLD WIDE WEB FOR EASY ACCESS TO LEGAL INFORMATION**

Enthusiasm for the Web is enthusiasm for a small part of what it has to offer, and for very focussed use of that part. There are many reservations now being expressed and debated about the merits of the mass delivery of massive amounts of information. How viable a data-information-knowledge-wisdom continuum is in a technology-driven environment is a serious question for society, about which we need to be at least cautious, if not sceptical. Nevertheless, the Internet is unrivalled in what it can do for enhancing the accessibility of legal information, even if there is much more to be done in enabling people to sift and sort, and use the information effectively.

#### **Other mechanisms**

The World Wide Web on the Internet is a form of delivery mechanism, of getting information across, along with CD ROMs, and online databases. Technically, the hypertext capability is as useful on CD ROMs and online services as it is on the Internet; the emphasis here is on hypertext in the context of the Internet because, for dissemination of public legal information, the Internet has the advantage that it is, relatively speaking, public and, again speaking relatively, very cheap.

The Internet has a distinct advantage too in its ability to deliver up-to-date information: the information is updated centrally, rather than having to distribute updated information to users, a little like the difference between getting the latest news every hour on the radio and waiting for the delivery of the latest edition of the newspaper.

#### **Flexibility**

The Web is a flexible, attractive and easy means of dealing with what is, at the end of the day, merely pages and pages and pages of the written word. While it is the business of lawyers to understand the written word, the necessary level of comprehension does not exist throughout the community. Thus, the delivery of all law to all people at all times, in great piles of paper on their kitchen tables, is hardly likely to improve their access to an understanding of law.

The Web is between the text and the reader - what a web page does is add value by supplementing the reader's own skills and abilities. The reader can manage the materials in a way that better reflects their own needs: save them, copy them, 'bookmark' them, jump around them, link disparate parts together.

The AustLII database, and other similar databases such as that at Cornell, are accessible only through the Web, either by connecting directly or by linking from other Web sites. A comparison of the Web page access provided by AustLII to its own data, with the Web page access provided by Foundation Law to the same data, illustrates the amenability of the Web to customised design. Foundation Law provides simple and intuitive access to the information, without relying on assumed knowledge of the user.

For non-lawyers, access to legal material can be designed that does not require an understanding of the distinction between primary and secondary legal materials, or an ability to distinguish State and Federal courts by their name alone.

#### **Simplification**

Another feature of the Web is its ability to sit on top of complex legal search software. A powerful search engine such as SINO, designed by Andrew Mowbray at AustLII, or many of the commercially available products, is, if it is to be effective, complex in its operation. In the same way that the data

is transformed into something more accessible for the user, so too is the complexity of the search engine apparent to the user as a simple mechanism of entering search terms and pointing or clicking with a mouse.

#### **Multiple references**

The capacity of the Web, through its hypertext feature, to take a reader back and forth to different databases at will, is unique. A non-electronic equivalent might be opening 15 books on your desk at once with yellow sticky tabs on the pages, or holding five fingers of one hand and two fingers of another in different sections of the one book that you are reading.

Thus the Web access to the AustLII database enables you to read the section of an Act that is referred to in the judgment you are reading, to take time out to cross reference a point being made in one judgment with a similar point being made in another judgment, or to follow one of the mazes that our legislative cross reference takes us into in order to answer a relatively straight forward question. Quite simply the Web, when combined with a database and search engine, puts all the information in one place, on the screen in front of the user.

#### **Economy of text**

A further advantage of the Web's particular ability to bring together many resources in one place is the presentation of the same information to different people in a way that is tailored to their needs. A legal database, a collection of the text of legislation and cases, is comprehensible to a lawyer because it is a lawyer's skill to read and understand such text. The particular access that the Web gives to this data is directed more to facilitate access and cross referencing than comprehension of the actual text.

Thinking of the Web as a filter of sorts, a different filter will allow the same material to be seen in a different light: Web pages can be designed to enhance a non-lawyer's comprehension of the same material that is already comprehensible to a lawyer. The Web allows a reader to take time out to refer to explanatory text, to illustrations and examples. The Web is effectively creating many books from the same text, without having to alter or replicate the text.

## RECENT CHANGES TO LEGAL PRACTICES

There is no relevant empirical data about the operation of legal practices on which to assess the way that information technology has changed that operation. The Bar Association in early 1996 conducted a survey of computer ownership and use among barristers, the results of which showed a surprisingly high level of use of computers, although this is something short of making full use of the information aspects of modern technology.

### First Class Law

The operation by the Law Foundation of NSW of the First Class Law communications project was an opportunity for close study of the manner in which lawyers can use information technology to undertake transactions, and take part in processes, that quite simply were not possible otherwise.

First Class Law is a proprietary communications network which is built on the First Class® software from SoftArc. It relies on a user installing the software from a disk, and dialling in to the First Class Law server at the Law Foundation via modem. It has the features of most similar products, such as Lotus Notes, in that it is private and access is limited to subscribers; it is not the public forum that the Internet is. In addition, it is easy to install, easy to use, and secure. It therefore provides a slightly distorted view of the prospects for use of the Internet, as these features, essential to the ready adoption by lawyers of technology, are not present to the same degree in the Internet.

### Electronic legal practice - communications

The Law Foundation's use of this communication technology has seen the following:

- *electronic briefing and advising.* Solicitors have taken to briefing barristers electronically, and barristers have been able to provide their advices in the same way. At either end the user can print off the document in hard copy if their personal work practice requires it, or to maintain a hard copy filing system.
  - *Court Lists.* Court lists are available as soon as they have been finalised by the court: the day before the relevant day, rather than in the Sydney Morning Herald on the morning. Lawyers, clerks and librarians go to the court lists to check for the time and place for their own matter, and larger law firms and legal organisations can go to the court lists and either reroute them to their internal network or print off a hard copy.
  - *Transcripts.* The transcripts of the Police Royal Commission have been available to a subscriber group within the First Class Law subscribers, immediately the transcripts are created, and well before they are available in hard copy.
  - *Information exchange.* In public, private and topic-specific discussion groups, lawyers have been asking questions about current practice, current matters, legal developments, and thorny issues. And other lawyers have responded, giving answers, offering practice tips, precedents, news and gossip.
- It is not difficult to extend these examples into quite realistic forecasts of what else is possible. The court lists for some courts could be done for many, the transcripts for one jurisdiction could be done for many, the document exchanges among the subscribers of First Class Law could be done among all those with electronic access, and whole new areas of activity could be developed such as electronic lodgment of documents.
- Because of the potential of the Web, and its dramatically expanding coverage and accessibility, the Internet is now a more likely medium for these developments than a private communications system. To different degrees, all the activities mentioned above can be carried out through the Internet.

### The real effect of communications on legal practice

While these changes to legal practice are happening, a real question must be asked - to what end? There is no doubt that some of the examples given are attractive for the way that they overcome barriers of time and distance, opening up new contacts and connections, enabling more time for planning, and quicker execution of tasks. But similar justifications can be made, after the event, for the adoption of word processes, faxes, voice mail and mobile phones. When the criteria are mobility, accessibility, speed and capacity, most new technology is a "success" and a "must have" before it even starts.

Is the conduct of legal practice more efficient as a result? If more efficient, what is done with the time and resources saved? Does it result in any of: cheaper legal services, more leisure time for legal practitioners, better allocation of time to produce better quality services? More things are done more quickly, but to what end?

Whatever the answer is, it is unlikely to halt or even slow down the almost compulsive adoption by lawyers, no less than by the community generally, of new technology. We would be well served by understanding the effects on legal practice of the adoption of technology if it meant that we could introduce and advocate for criteria other, and more sophisticated, than "more done more quickly".

One such consideration that has become apparent from the First Class Law project is enhanced sharing of information. Unlike increased speed and quantity, an increase in the sharing of information by lawyers, among lawyers is a worthwhile end in itself, particularly in a profession that is so secretive and competitive (in the old sense of the word).

In the First Class Law project, lawyers ask, at large, a question about an issue in their practice. This communication immediately breaks down the distance and isolation that characterises regional, suburban, small and sole practice. As well, it enhances any lawyer's ability to do what professional practice is all about: to know what's going on, what current views and practices are, what changes are in the

offing, what different and better ways there might be for a process or transaction.

The lawyer, in asking the question, risks the question reflecting adversely on their ability, but the very asking of it reflects favourably on the lawyer's willingness to learn, and to enhance service to the client.

#### Electronic legal practice - The Web

The *Foundation Law* Internet project has given these examples of changes that might occur in legal practice as a result of the way in which the Web makes legal information available:

- *Barristers.* Public legal information is largely legislation and judgments, the very basis of a barrister's practice. It is the Bar that has been signing up to *Foundation Law* in disproportionate numbers. They of course are the ones who really want to be able to sit at their desks and bring up on their screens the latest amendments and the latest cases; depending on their word processing skills they can then cut and paste text from a case into an advice.
- *Practice libraries.* It seems that the availability of the text of legislation and judgments on the Internet is sufficient for many practitioners who have decided to do without subscriptions to particular services, and so to reduce the costs of their library. For many lawyers there will still be the need to buy the value that commercial publishing houses add to legislation and judgments, and the commercial publishers will be able

to sell access to their products with member subscriptions to password protected Web sites. But for public legal information, private practitioners are finding the opportunity for savings.

- *Other resources.* The Web delivers to users all that is on it, and it's hard to know where to begin. The favourable responses we have had to the packaging of *Foundation Law*, which delivers customised software with references to other legal information sites on the Web, indicates at this early stage that lawyers are looking around. Through the Web sites they can ask the questions referred to above when describing First Class Law, and get answers from the jurisdiction of their choice.
- *Introduction to Technology.* More a transient phenomenon than a substantive change, the awareness of the possibilities of the Internet has begun to turn lawyers to technology. Many of the *Foundation Law* subscribers are coming to computers, or to Windows programs and modems for the first time, lured by the Internet and its promise. The push from recent law graduates, who have learnt their legal search skills on-line and on the Web, is adding to the impetus for wholesale practice change.

#### A possible future

Network technologies offer prospects for very different forms of legal services. The point is made simply by referring to the proliferation of

do-it-yourself legal kits and guides, and the slow but persistent trend to legal procedures that are comprehensible to non-lawyers. Think of that phenomenon, and add to it the power of information technology.

There are already expert legal systems available. Law subjects have been taught by computer with the lecturer becoming a supervisor, tribunal application forms can be completed by responding to a guided tour through the application on screen. The development of a legal expert system that substitutes for the intuition and experience of a professional person is Holy Grail, but complex diagnostic systems have been developed for general medical practitioners and are feasible for lawyers in specialised areas of practice.

Video conferencing can bring a client to a lawyer 'virtually'; the Internet can convey a question to a million people, any of whom may offer an answer within minutes; expert systems can substitute for a real physical presence; property and company searches can be done from the desk, as can the filing of documents.

It's not all good, it's not all bad, but for lawyers it's all very, very different.

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## VOD: Broadcasting or Telecoms?

**Grantly Brown outlines developments in the provision of Video on Demand (VOD) in Hong Kong, including an analysis of the recent decision on the regulatory status of VOD in Hong Kong.**

### Introduction

Few services better illustrate the difficulties of maintaining a rigid regulatory dichotomy between broadcasting and telecommunications than video on demand ('VOD'). VOD also demonstrates how technological developments tend to leave legislators flat-footed and reveal legislative ambiguities that some parties are very

willing to exploit and that other parties are just as anxious to cure to shore up existing franchises.

The appropriate regulation of VOD has been an issue of smouldering discord between cable operators and PTTs for some time now in such places as the United Kingdom and the USA. In Hong Kong this year, the dispute became a conflagration as Wharf Cable, fearful that Hong Kong Telecom's ('HKT')

proposed VOD service would erode its fledgling cable network's business, took the Hong Kong Government to Court. Wharf claimed that the VOD service was really a subscription television service which infringed Wharf's monopoly to provide these services in Hong Kong for a period of at least 3 years. The case was the culmination of a very public 12 month campaign by Wharf to pressure the Government into delaying HKT's VOD service.