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AUSTLII 1995: WHAT DID WE THINK WE WERE DOING?

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AustLII 1995: What *did* we think we were doing?

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Contribution to the Legal Information Institute (Cornell) Vox Populii series '25 for 25'[1]

From an equally long time ago, and in one of those galaxies so far far away it is sometimes mistaken for the mythical Oz, we received Tom Bruce's call[2] for reflection on the history of free access to legal information. "Here's what we *thought* we were doing, and here's what it really turned into", he suggested, so I have taken him up on that. Andrew Mowbray and I started the Australasian Legal Information Institute (AustLII) in 1995, and our second employee, Philip Chung, now AustLII's Executive Director, joined us within a year. We are still working together 22 years later.

AustLII had a back-story, a preceding decade of collaborative research from 1985, in which Andrew and I were two players in the first wave of 'AI and law' (aka 'legal expert systems'). Our 'DataLex Project' research was distinctive in one respect: we insisted that 'inferencing systems' (AI) could not be a closed box, but must be fully integrated with both hypertext and text retrieval (for reasons beyond this post). Andrew wrote our own search engine, hypertext engine, and inferencing engine; we developed applications on IP and on privacy, and had modest commercial success with them in the early 90s. Tools for relatively large-scale automation of mark-up of texts for hypertext and retrieval purposes were a necessary by-product. In that pre-Web era, when few had CD ROM drives, and free access to anything was impractical and unknown, products were distributing on bundles of disks. Our pre-Web ideology of 'integrated legal information systems' is encapsulated in a 1995 DataLex article.[3] But a commercial publisher pulled the plug on our access to necessary data, and DataLex turned out to have more impact in its non-commercial after-life as AustLII.

Meanwhile, in January 1995 Andrew and I (as UTS and UNSW Law Schools) had obtained a grant of AUD $100,000 from the Australian Research Council's research infrastructure fund, in order to explore the novel proposition that the newly-developing World-Wide-Web could be used to distribute legal information, and for free access, to assist academic legal research. A Sun SPARCstation, one ex-student employee, and a part-time consultant followed. Like Peter & Tom[4] we sang from Paul Simon's text, 'let's get together and call ourselves an Institute', because it sounded so established.

What were we thinking? (and doing)

What were we thinking when we obtained this grant, and put it into practice in that first year? We can reconstruct this somewhat, not simply from faulty memories, but from what we actually did, and from our first article about AustLII[5] in 1995, which contained something of a manifesto about the obligations of public bodies to facilitate free access to law. So here are things we did think we were doing in 1995 – no doubt we also had some bad ideas, now conveniently forgotten, but these ones have more or less stuck.

1. *End monopolies* – Australia had been plagued for a decade by private sector and public sector monopolies (backed by Crown copyright) over computerised legal data. Our

[1] https://blog.law.cornell.edu/voxpop/2017/02/24/25-for-25-austlii-1995-what-did-we-think-we-were-doing/
[2] https://blog.law.cornell.edu/voxpop/2017/02/10/25-for-25-so-its-been-25-years-the-lii-its-descendants-and-their-future/
[3] https://ssrn.com/abstract=2183481
[4] https://blog.law.cornell.edu/voxpop/2017/01/30/25-for-25-1-legal-academic-1-technologist-1-sun-box-an-institute/
[5] http://www.austlii.edu.au/au/journals/JlLawInfoSci/1995/5.html

core principle was (polite) insistence on the 'right to republish'[6] legislation, cases, and other publicly funded legal information. We appropriated our first large database (Federal legislation), but got away with it. The High Court told the federal government to supply 'its cases' to AustLII, and other courts followed.

2. *Rely on collaboration* – Our 1995 'manifesto' insisted[7] that courts and legislative offices should provide the best quality data available to all who wished to republish it. Insistence on collaboration was a survival strategy, because we would never have enough resources to manage any other way. From the start, courts started to email cases, and adopt protocols for consistent presentation.

3. *Disrupt publishing* – Much Australian commercial legal publishing in 1995 was not much more than packaging raw legal materials, with little added value, for obscene prices. We stated that[8] we intended to force 2nd-rate publishing to lift its game ('you can't compete with free'). It did, and what survived, thrived.

4. *Stay independent* – While we had material support from our two Law Schools, and an ARC start-up grant, we tried from the start to be financially independent of any single source. Within a year we had other funds from a Foundation, and a business group (for industrial law), and were negotiating funding from government agencies. Later, as the funds needed for sustainability became larger, this was much more of a challenge. However, independence meant we could publish any types of content that we could fund, with no one else dictating what was appropriate. A 93 volume Royal Commission report on 'Aboriginal deaths in custody'[9] that the federal government had attempted to suppress was an early demonstration of this.

5. *Automate, integrate, don't edit* – The DataLex experience gave us good tools for complex automated mark-up[10] of large sets of legislation, cases etc. Collaboration in data supply from official bodies multiplied the effect of this. We edited documents only in emergencies. Sophisticated hypertexts also distinguished the pioneering work of the LII (Cornell) and LexUM from the chaff of commercial publishers. AustLII inherited from DataLex[11] a preoccupation with combining the virtues of hypertext and text retrieval, most apparent from day 1 in the 'Noteup' function.

6. *Serve all audiences* – Our initial grant's claim to serve academic research was only ever a half-truth, and our intention[12] was to try to build a system that would cater for all audiences from practitioners to researchers to the general public. The LII (Cornell) had already demonstrated that there was a 'latent legal market', an enormous demand for primary legal materials from the public at large.

7. *All data types welcome* – We believed that legislation, cases, treaties, law reform, and some publicly-funded scholarship should all be free access, and a LII should aim to provide them, as its resources allowed. This was a corollary of aiming to 'serve all audiences'. The first version of AustLII included examples of all of these (and a Royal Commission report), except it took a year to get the Department of Foreign Affairs to

[6] http://www.austlii.edu.au/au/journals/JlLawInfoSci/1995/5.html#Heading61
[7] http://www.austlii.edu.au/au/journals/JlLawInfoSci/1995/5.html#Heading68
[8] http://www.austlii.edu.au/au/journals/JlLawInfoSci/1995/5.html#Heading143
[9] http://www.austlii.edu.au/au/other/IndigLRes/rciadic/
[10] http://www.austlii.edu.au/au/journals/JlLawInfoSci/1995/5.html#Heading83
[11] http://www.austlii.edu.au/au/journals/JlLawInfoSci/1995/5.html#Heading122
[12] http://www.austlii.edu.au/au/journals/JlLawInfoSci/1995/5.html#Heading150

partner a Treaties Library. It took us much longer to develop serious 'law for the layperson' content.[13]

8. *'Comprehensiveness'* – As Daniel Poulin says[14] in this series, AustLII was first to aim to create a nationally comprehensive free access system, or to succeed. But the initial aims of comprehensiveness were limited to the current legislation of all 9 Australian jurisdictions, and the decisions of the superior courts of each. It took 4 years to achieve. The decisions of all lower courts and tribunals, and historical materials, were later ambitions for much more ambitious comprehensiveness, still not quite achieved.

9. *'Born digital' only* – In 1995 there was already more digital data to gather than AustLII could handle, and scanning/OCR'ing data from paper was too expensive and low quality, so we ignored it, for more than a decade.

10. *'Australasian' but 'LII'* – We asked Cornell if we could borrow the 'LII' tag, and had vague notions that we might be part of a larger international movement, but no plans. Our 1995 article exaggerates in saying 'AustLII is part of the expanding international network of public legal information servers' – we wished!

11. *Neutral citations, backdated* – As soon as AustLII started receiving cases, we applied our own 'neutral citations' (blind to medium or publisher) to them, and applied this retrospectively to back-sets, partly so that we could automate the insertion of hypertext links. As in Canada,[15] this was a key technical enabler. A couple of years later, the High Court of Australia led the Council of Chief Justices to adopt officially a slight variation of what AustLII had done (and we amended our standard). The neutral citation standard set with '[1998] HCA 1' has since been adopted in many common law countries. AustLII has applied it retrospectively as a parallel citation, for example '[1220] EngR 1'[16] and so on. Later, the value of neutral citations as a common-law-wide interconnector enabled the LawCite citator.[17]

12. *Reject 'value-adding'* – We saw invitations to being 'value-added' (now 'freemium') services on top of AustLII's 'basic' free content as a slippery slope, a recipe for free access always being second rate. So AustLII has stayed 100% free access content, with and all technical innovations.

13. *'Free' includes free from surveillance* – Access was and is anonymous with no logins, cookies, advertisements or other surveillance mechanisms beyond logging of IP addresses. We used the Robot Exclusion Standard to prevent spidering/searching of case law by Google etc, and most (not all) other LIIs have done likewise. This has helped establish a reasonable balance between privacy and open justice in many common law jurisdictions. It also helps prevent asset stripping – AustLII is a free access publisher, not a repository.

This 'bakers dozen' aspirations comes from another century, but the issues and questions they address still need consideration by anyone aiming to provide free access to law.

Why we were lucky

[13] http://austlii.community/foswiki/NTLawHbk/NTLawHandbook
[14] https://blog.law.cornell.edu/voxpop/2017/02/10/25-for-25-so-its-been-25-years-the-lii-its-descendants-and-their-future/
[15] https://blog.law.cornell.edu/voxpop/2017/02/10/25-for-25-so-its-been-25-years-the-lii-its-descendants-and-their-future/
[16] http://www.commonlii.org/uk/cases/EngR/1220/
[17] http://www.austlii.edu.au/lawcite/

In at least four respects, we did not know how fortunate we were in Australia: the Australian Research Council awarded annual competitive grant funding for development of research infrastructure, not only for research; all Australian law schools were willing to back AustLII as a joint national facility (already in 1995 'supported by the Australian Committee of Law Deans'); UNSW and UTS Law Faculties backed us with both material assistance and academic recognition; and our courts never required AustLII to redact cases (contrast Canada and New Zealand), they did it themselves where it was necessary. Our colleagues in other common law jurisdictions were often not so fortunate.

Cornell, LexUM and AustLII were all also fortunate to be better prepared than most commercial or government legal information publishers to take advantage of the explosion of public usage of the Internet (and the then-new WWW) in 1994/5. None of us were 'just another publisher', but were genuinely novel developments. Later LIIs did not have this 'first mover advantage', and often operated in far more difficult circumstances in developing countries.

Unimaginables

Given what AustLII, and free access to law globally, have turned into, which of those developments did we not imagine, back in 1995? Here are a few key changes, unforseen by us at the time.

Digitisation from paper became financially feasible for AustLII a decade ago, and since then capturing historical data has become a major part of what AustLII does, with such results as the complete back-sets of over 120 non-commercial Australasian law journals,[18] and almost all Australasian reported cases and annual legislation 1788-1950.[19] The aims of both 'horizontal' comprehensiveness of all current significant sources of law, and 'vertical' comprehensiveness of past sources, is new and no longer seems crazy nor unsustainable.

We did not envisage the scale of what AustLII would need to manage by way of data (currently 749 Australasian databases,[20] and almost as much again internationally), sources (hundreds of email feeds), page accesses (about 1M per day), collaboration (daily replication of other LII content) and the equipment (and funding) demands it would pose. Independence has resulted in hundreds of sources of funding[21] for maintenance, and innovative developments are still supported by ARC and other grants. The future holds no guarantees, but as Poulin says, history has now demonstrated that sustainable large-scale LII developments are possible.

While AustLII's initial aims were limited to Australasia, by the late 90s requests for assistance to create similar free access LIIs involved AustLII, LexUM and the LII (Cornell) in various countries. The Free Access to Law Movement (FALM)[22] has expanded to nearly 70 members, has directly delivered considerable benefits of free access to law in many countries, and has encouraged governments almost everywhere to accept that free access to legislation and cases is now the norm, in a way that was not so in the early 90s. The delivery of free access content by independent LIIs has, for reasons Poulin outlines,[23] turned out to sit more comfortably in common law than in civil law jurisdictions, and no global access to law via a LII framework has emerged. However, although this was not envisaged back in 1995, AustLII has

[18] http://www.austlii.edu.au/au/journals/
[19] http://www.austlii.edu.au/au/special/legalhistory/
[20] http://www.austlii.edu.au/
[21] http://www.austlii.edu.au/austlii/contributors/
[22] http://www.falm.info/members/current/
[23] https://blog.law.cornell.edu/voxpop/2017/02/10/25-for-25-so-its-been-25-years-the-lii-its-descendants-and-their-future/

been able to play a coordinating role in a network of collaborating LIIs from many common law jurisdictions, resulting in access via CommonLII[24] to nearly 1500 databases, and to the daily interconnection of their citations via LawCite.[25]

Every free access to law provider has a different story to tell, with different challenges to overcome in environments typically much more difficult than Australia. Somewhere in each of their stories there is a corner reserved for the pioneering contributions of Martin, Bruce and the LII at Cornell, and the innovations they continue to contribute 25 years after they, more than anyone, set the wheels in motion.

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[24] http://www.commonlii.org/
[25] http://www.commonlii.org/LawCite/