

Experience from the Free Access to Law Movement and its networks

Graham Greenleaf AM

Professor of Law & Information Systems,
UNSW, and Co-Director, AustLII

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Where I come from ... AustLII

- Australasian Legal Information Institute
- Operating since 1995 (2nd LII created)
- 500 databases of Australian & NZ law
 - Cases, legislation, treaties, law reform, scholarship
 - LawCite citator links all these sources
- Free access = 600,000+ page accesses/day
 - Highest access of any Australian online provider
- Jointly run by 2 Law Schools (UNSW & UTS)
- Sustained by a combination of
 - charitable Company (\$1M p/a donations) and
 - Research Centre (\$1M p/a grants & contracts)

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Overview

1. LIIs, the Free Access to Law Movement, and LII networks
2. Key issues for free access LIIs to contribute to access to foreign law
 - The right to republish official data
 - ‘Downstream’ integrity and authority
3. Steps toward a new legal norm

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The LIIs and FALM

- **Legal Information Institutes (LIIs)**
 - provide free access to multiple sources of legal information; re-publishers, not the original source
 - Most are from academia or NGOs, some from govt.
 - In 20 years since first LII (Cornell), well-established in Canada, Australia, the UK, Ireland, NZ, and HK
 - But many are from developing countries: eg Pacific Islands, Liberia, Philippines, Morocco, Sri Lanka, Kenya, Mexico, Thailand, southern Africa and India
- **Free Access to Law Movement (FALM)**
 - has 41 members, mainly NGO LIIs, formed 2002
 - <<http://fatlm.org/>> gives links to all members
 - subscribe to *Declaration on Free Access to Law ...*

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Declaration on Free Access to Law (Montreal, 2002)

An assertion of rights and obligations of LIIs:

1. 'Public legal information' is 'digital common property'
2. It should be accessible free of charge
3. 3rd parties like LIIs have the right to republish
4. Government bodies that create or control it should provide access for republication
5. Supporting local initiatives has primacy
6. Participation in LII networks is encouraged
7. Mutual support objective of LIIs
8. Reciprocal international benefits of free access

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LII Networks/Portals

- Portal = searches over collaborating LIIs + other content located on portal from additional countries and sources
 - Users sent back to the original LII for results
- AustLII operates 3 LII portals, and a citator, in collaboration with 14 other LIIs
 - *AsianLII*: 28 Asian countries; *CommonLII*: 56 Commonwealth countries; *WorldLII*: 100+ countries & international law
 - *LawCite*: Citation data from WorldLII partners + others
- Scope of these networks & value for comparative research
 - 1,400 databases (mainly from other LIIs) from 100+ countries
 - At least 2M cases, increasingly historical
 - Legislation databases from over 100 countries
 - 4M citation records in LawCite

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Significance of LIIs, FALM & networks for HccH proposals

1. Substantial, heavily used, and apparently permanent
 2. NGO LIIs guarantee *free access*, permanently
 - § National/regional LIIs will always be the main LII source
 - § LII portals may have extra data, and 'network' features
 3. LIIs provide *different* features from govt. systems
 - § Different enhancements, combinations, and searching
 - § Additional data which enhances official data
 4. LIIs get their data from the same *official sources*
 - § Can have the same integrity and authority as other systems
 - § BUT governments must assist and not obstruct this role
- Conclusion: LIIs can play a major role in access to foreign law, provided governments don't create monopolies**

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The HccH 'Guiding Principles' (2008)

- All 18 Guiding Principles are important
 - Principle 3 recognises the key 'Stage 1' LII principle, the right to **re-publish** official data
 - 'Stage 2', crucial for the future, is in Principles 4-6 on '**Integrity** and **authoritativeness**':
 4. States are to make available *authoritative* electronic versions of their legal materials
 5. To ensure those who *re-publish* or re-use them can do so *with* clear indications of their origins and *integrity*.
 6. To remove obstacles to the *recognition* of these materials in their courts
- Linking these Principles is the key to free access**

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Implications of Principles 4-6

1. Court-issued *authorised* versions of cases (P 4)
 - Courts to provide the most authoritative versions of their cases to all republishers;
 - no monopoly to an ‘authorised’ commercial publisher
 2. *Authorised* online legislation (P4)
 3. ‘Downstream’ *integrity* (P5)
 - Courts & legislatures to provide their outputs with the highest integrity reasonable (eg digitally signed) to all republishers, so they can distribute with integrity intact,
 4. Courts to regard as *admissible* these *republished* versions, as both authoritative and authentic (P6)
 - § This means authority is also preserved ‘downstream’
- These principles mean LIIs, not only governments, can deliver foreign laws with authority and integrity***

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Steps toward a new legal norm

1. HccH Convention on Access to Foreign Law
 - § The start of the process to create a set of legal norms
 - § Most of its provisions will only be ‘best efforts’
 2. A UN General Assembly Resolution
 - § Based on the HccH ‘Guiding Principles’
 - § Will influence many countries outside HccH’s reach
 3. National laws implementing principles
 - § Eg proposed US *Electronic Legal Material Act*
 4. FALM’s Declaration on Free Access to Law
 - § Needs updating to include ‘Guiding Principles’
 - § Could give NGOs world-wide common goals
- These 4 steps could lead to global norms of admissible free access foreign laws***

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