Chapter 7.11
Free Access to Law and Open Source Software

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ABSTRACT

Law consists of legislation, judicial decisions, and interpretative material. Public legal information means legal information produced by public bodies that have a duty to produce law and make it public. Such information includes the law itself (so-called primary materials) as well as various secondary (interpretative) public sources such as reports on preparatory work and law reform and resulting from boards of inquiry and available scholarly writing. The free access to law movement is a set of international projects that share a common vision to promote and facilitate open access to public legal information. The objectives of this chapter are to outline the free access to law movement, to set out the philosophies and principles behind this, and to discuss the role that open source software has played both in terms of its use and development.

INTRODUCTION

The *free access to law movement* is a set of international projects that share a common vision to promote and facilitate open access to public legal information. There are direct synergies between the notion of "freeing the law" by providing an alternative to commercial systems and the ideals that underpin *open source software*. In addition, open source software has been an essential foundation for the work that has been done and new open source code has been developed.

The objectives of this chapter are to outline the *free access to law movement*, to set out the philosophies and principles behind this, and to discuss the role that open source software has played both in terms of its use and development. It concludes with an assessment of what has been achieved and of the similarities between the free access to law and open source software movements.

BACKGROUND

Law consists of legislation, judicial decisions and interpretative material. *Public legal information* means legal information produced by public bodies that have a duty to produce law and make it public. This includes the law itself (so-called *primary materials*) as well as various *secondary* (interpretative) public sources such as reports on preparatory work and law reform and resulting from boards of inquiry and available scholarly writing. It also includes legal documents created as a result of public funding.

Lawyers have been interested in the electronic publication of legal materials and associated information retrieval systems for a very long time. The earliest reported experiment is generally said to have been done by John Horty at the University of Pittsburgh in the late 1950s (Bing, 2004). The first major commercial system appeared in 1973 with the launch of *Lexis* (now *LexisNexis*). This was based on an earlier system developed by the Ohio Bar (OBAR) which had been established in 1969. OBAR was acquired by Mead Data Central and redesigned to become Lexis. LexisNexis is now one of the largest commercial text databases in the world. It is currently owned by the Reid publishing group. Lexis was followed by *Westlaw* in 1976. Westlaw is now owned by Thomson Publishing and is the major business competitor to Lexis. Several other commercial and government based systems also appeared about this time, but

were largely ultimately unsuccessful such as the now defunct European system *EUROLEX* and the Australian system *SCALE* (Greenleaf, Mowbray, & Lewis, 1988).

In the 1980s and 1990s, Lexis and WestLaw expanded the scope of their services to include international collections and in their original jurisdiction (the United States) established a near duopoly (McKnight, 1997; Arewa, 2006). Attempts were made in various other places such as Australia and Canada to create either government or government sanctioned commercial monopolies (Greenleaf et al., 1988).

The resulting environment was, and to some extent still is one that is characterised by limited access to basic legal materials. Whilst the commercial systems provide a very sophisticated set of services they are for the most part targeted at the legal profession, they require significant training in order to use them. The services are very expensive and generally are not available for casual use. Non-lawyers seldom access the commercial systems and even lawyers can often not afford to use them.

Why is Free Access to Legal Information Important?

At the most fundamental level, access to public legal information supports the rule of law. Citizens are governed by laws and so have a need and right for effective access to these laws. Businesses also generally operate in a regulated environment and have similar needs. Effective access to basic legal information is essential both from a social perspective and also to facilitate the proper operation of business and commerce.

Apart from being able to access domestic laws, there is also increasingly a need to access law from other jurisdictions. Business operates on an international basis. Corporations need to be aware of international regulatory requirements and countries need to make their legal systems

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