# ACCESS TO LEGAL INFORMATION & RESEARCH IN DIGITAL AGE


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# PREFACE

The high proliferation in the use of information technology has given birth to new information age also called as electronic age where information users depend on computer assisted legal research. A number of electronic databases have been designed by various commercial publishers worldwide for supporting legal research and scholarship. Apart from commercial databases, a many open access initiatives have also taken place around the world for the support of law and legal scholarship by government, Ngo's and individual efforts. For advancement of legal research it is critical for students, faculty members and surely the library professionals to equip themselves with efficient knowledge and training to handle digital information available around the world.

Since the mid-1990s the Internet's World-Wide-Web has provided the necessary technical platform to enable free access to computerized legal information. Prior to the web there were many online legal information systems and numerous legal information products distributed on CD-ROM, but there was no significant provision of free access to legal information anywhere in the world. The ease of use of graphical browsers from around 1994, and the web's use of hypertext as its principal access mechanism (at that time) meant that the web provided a simple and relatively consistent means by which legal information could be both provided and accessed as an attractive alternative to the proprietary, expensive and training-intensive search engines on which commercial online services largely relied. Most legal professionals have used free online resources to help in the legal research process. Whether it is a judgment downloaded from a court's Web site, a statute located using India Code or PRS India, an article on Wikipedia, or a post on someone's blog, the quantity and variety of free online resources seems to grow on a daily basis. Some have even wondered if these resources can one day replace the need to subscribe to a computer-assisted legal research (CALR) service such as Westlaw or LexisNexis.

The Free Access to Law Movement is the umbrella name for the collective of legal projects across several common law countries to provide free online access to legal information such as case law and legislation. The movement began in 2002 with the creation of the Cornell Law School Legal Information Institute by Tom Bruce and Peter Martin. The name Legal Information Institute (LIIs) has been widely adopted by other projects. It is usually prefixed by a country or region identifier. In October 2002 the meeting of LIIs in Montreal at the 4th Law via Internet Conference, adopted a declaration as a joint statement of their philosophy of access to law. There were some further modifications of the Declaration at the Sydney meeting of LIIs in 2003 and at the Paris meeting in 2004. The text of the declaration is attached herewith.

However Commercial Databases have its own utility and importance due to its editorial enhancement and efficient search engines. Commercial

databases are regularly updated and advance through the engagement of trainers for resolving issues and problems of their clientele.

This compilation is the first of its kind of measure in India to facilitate the creation of a single platform of Law Professors, Judges, Advocates, Law Students and Librarians to share views and expertise in aid of fruitful utilization of digital information and thus to bring forward the problems faced by law researchers in an increasingly electronic environment while dealing with licensing, use of databases, and reference linking, user education and preservation of digital formats in the changing realm of publications pattern.

**Prof. (Dr.) Ranbir Singh**

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# CHALLENGES FOR FREE ACCESS TO LAW IN A MULTI-JURISDICTIONAL DEVELOPING COUNTRY: BUILDING THE LEGAL INFORMATION INSTITUTE OF INDIA

**Graham Greenleaf, VC Vivekanandan**
**Philip Chung, Ranbir Singh & Andrew Mowbray***

**Abstract**

This article analyses the complexities involved in providing free public online access to the "public legal information" of the Indian legal system. It starts with some of the causes of the complexity of Indian legal information then describes the considerable progress that has previously been made in the provision of free access to some types of legal information, but why the result is still below international standards. The article then explains a project to remedy some of these deficiencies, the Legal Information Institute of India (LII of India), being carried out by eight Indian law schools and an international partner. It has developed in its first year of public operation, the LII of India, a system with over 750,000 searchable documents and 151 databases. The considerable remaining challenges for creation of a world-standard and sustainable system are then outlined, and steps proposed to address them. The extent to which this collaborative project might be a model for development of free access to legal information in other countries is considered.

By "public legal information" we mean that information which, as a matter of public policy, ought to be available for free public access in a society which values democracy and the rule of law. This has been argued elsewhere to include legislation, case law, treaties a country has entered into, reports proposing reform of the law, and such legal scholarship as authors have chosen or are required to make freely available to the public.[1] For the purpose of this article, this definition is assumed.

## 1. The Complexity of the Indian Legal and Social Contexts

Developing a free access legal information system for India involves more complex technical and organisational issues than is the case for most other

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countries. This is because of the complexity of India's constitutional structure and resulting legal institutions, the value it places on democracy, human rights and the rule of law, the litigious nature of its citizens, its linguistic complexity, and its expanding market economy.

### *1.1 A Complex, Sophisticated Legal System and a Litigious Society*

India is a very complex country of thirty-six jurisdictions: the Union, twenty-eight states and seven Union Territories comprise a system which shares characteristics of both a federation and (because of the powers of the centre) a unitary government.[2] It is a parliamentary democracy with a written constitution including human rights provisions.[3] The constitution is constantly interpreted by an activist Supreme Court which has delivered over 29,000 decisions since 1950, a rate of 500 per year.[4] Since independence from the United Kingdom in 1947, India has gradually expanded its number of states and territories through splitting existing states, primarily on linguistic lines,[5] and the process continues. This means there has been a steady increase in the number of separate legislatures, and the number of high courts (the apex court within a state), although some states and territories still share a high court. India's judicial system is primarily based on the common law tradition inherited from English law, with decisions of Indian courts going back to the eighteenth century. Its judicial structure is that of a "single structure of courts with the Supreme Court at its apex".[6] Central government legislation which is still in force dates from 1857, and that of some states goes back even earlier (for example, West Bengal to at least 1848).[7] The complexity of Indian law is therefore both broad and deep. The number of court decisions by Indian courts is prodigious compared with most countries. The total number of published decisions of India's Supreme Court and high courts approaches three quarters of a million for the past decade alone. Unlike some countries in Asia, India can be considered to be a litigious country in which people at all levels of life resort to the Courts to resolve many disputes (even though this often takes many years). Judicial and quasi-judicial forms have also gone beyond those based on British or common law models. The first local people's courts, or *lok adalats* was established in Chennai in 1986, based on Article 31A of the Constitution, and have gradually widened their scope from matrimonial affairs into many other matters.[8] Numerous administrative tribunals have been established[9] which are relatively more accessible to ordinary people than many courts, including tribunals for electricity and railway disputes. Some of these tribunals report considered decisions (as distinct from merely deciding cases) in vast numbers. There are 67,651 reported decisions interpreting the RTI Acts from the Central Information Commission of India from 2006-2011,[10] an average of more than 10,000 decisions per year.

### *1.2 A "Monitory Democracy"*

Indian democracy has twice recovered from near-death experiences, in 1975 to 1977 and in 2002 to 2004.[11] It was brought back to life by the Indian people at

the ballot box. Indian democracy is vibrant and tumultuous, despite its vicissitudes, the most obvious at present being the prevalence of corruption and the strong campaigns against it. Representative democracy goes beyond central and state legislatures, with local self-government (*panchayats*) having been introduced into India's 600,000 villages and towns in 1993.[12] Keane argues that developments in Indian democracy are the clearest example of a new form of democracy that he calls "monitory democracy",[13] distinct from direct democracy and representative democracy, that has emerged since the Second World War (coincident with Indian independence since 1947). He argues that India shows more clearly than elsewhere a recognition that citizens' interests in a democracy "must be represented not just through elections and debates and decisions in the central parliament, but in a wide range of post-Westminster processes", the essence of which is that they are "new mechanisms designed to introduce greater public accountability in the making of decisions by government". Among the devices he notes are the *panchayats*, very strong judicial review, compulsory quotas for those not previously represented in politics, and constitutional protection of indigenous rights.[14] And of vital importance was the application of new power-checking mechanisms, including *lok adalats* and water consultation schemes, but also extra-parliamentary inventions like participatory budgeting; "yellow card" reports on government services issued by citizen groups; the handling of public disputes through railway courts… and the invention of public interest litigation… enabling individuals and groups … to have their grievances presented on their behalf to the courts by public spirited individuals, or by the courts themselves.[15] Monitory inventiveness continues since Keane wrote, notably including the "I Paid a Bribe" online whistle-blowing movement,[16] which aims to "uncover the market price of corruption" and invites readers to "tell us your bribe story", so that de-identified information can produce maps of India's bribery "hot spots" down to the level of individual departments and cumulative amounts of bribes paid. Of the wide range of mechanisms of "monitory democracy" India has developed, one of the most striking (though not noted by Keane) and most relevant to free access to legal information, is the development of the right to information.

### *1.3 Constitutional Right to Information and Bureaucratic Lag*

India has developed a constitutional right to public information. A number of Indian states enacted "right to information" (RTI) Acts from 1997 to 2004,[17] covering what is elsewhere called "freedom of information" in relation to the public sector. In 2004 India's Supreme Court conclusively interpreted Article 19(1)(a) of the Constitution of India to impliedly include the right to information in the constitutional guarantees of freedom of speech and expression (*People's Union for Civil Liberties v Union of India*).[18] Consequently, national legislation was enacted as the *Right to Information Act 2005*. The reach of the legislation applies to all tiers of government and considerably beyond that to some parts of the private sector. This right, forced on the national government by the Supreme Court, has

resulted in Indian government institutions being required to make new efforts towards data management, and to provide access to the community about the laws that govern them. Though the constitutional right of freedom of speech has been interpreted to include access to information, this constitutional principle has not yet been developed in relation to legal information to require governments to meet the needs of the ordinary citizen to access legal information for free or to international standards of quality. One possible opportunity for the free access to law movement in India, which would rarely be possible in other countries, is to trigger a constitutional action to extend the scope of the constitutional guarantees toward a positive requirement to provide effective public access to legal information. Even if unsuccessful in the courts, such an initiative might catch people's imagination and demonstrate the need for government to take more effective action in relation to access to legal information. India is often praised as a successful democracy and open society[19] but this is still limited when it comes to access to legal information. As we will see, information on legislation and judicial decisions is scattered and often buried in a maze of websites run by ministries at central, state and territory levels. It is ironic that, while India is a hub for outsourced data processing, with a myriad of infotech companies working to cater to the database demands of the developed world, insufficient resources have been put into India's "domestic space" to bring it up to international standards.

### *1.4 "Auntie English" and the Complexity of Language Issues*

India has twenty-two official languages, and somewhere between 150 and 1,500 languages (depending on definitions of language and dialect).[20] Questions of language always have been and always will be controversial in India. Many independence leaders saw Hindi as the language of colonialism. However, proposals to adopt Hindi as the only official language in the Constitution met strong resistance from India's southern states, where it was not spoken widely. It was decided that the Constitution would provide that Hindi would be India's official language, but English was to continue in use for all official purposes until 1965 when Hindi would become the sole official language. However, opposition from the south continued (and was fortified by support from the Dalit community), and in 1967 a compromise was reached providing that "the use of English as an associate language in addition to Hindi for the official work at the Centre and for communication between the Centre and the non-Hindi states would continue as long as the non-Hindi states wanted it".[21] The authors of an authoritative history of India since independence note that India is now becoming more multilingual, with knowledge of Hindi spreading in the south though modern communications and entertainment and the study of English become more common in all strata of Indian society as a language of economic advancement. They conclude that "English is not only likely to survive in India for all time to come, but it remains and is likely to grow as a language of communication between the intelligentsia all over the country, as a library

language, and as the second language of the universities".[22] It is also likely to retain its privileged, but not exclusive, position in the legal system for some time to come.[23] One of the founders of Infosys, India's first successful high technology company recounts that "the seven founders of Infosys between themselves spoke five different languages at home, and English was the only language we shared".[23] Estimates of the current percentage of English-speakers in India vary. It may be as high as 11%.[25] The exact percentage is not important, but it is important to note that most sources of legal information in India are in English, a language that is only directly accessible by a minority of the population. The majority must otherwise rely on English-speaking intermediaries to deal with the legal system, at least at its higher levels. Nevertheless, English is the "link language" between all geographical and linguistic areas of the country, and the most common language of administration, business and the law. Nilekani calls it India's "auntie" language – perhaps not exactly one of the family, but still a welcome guest.

### *1.5 The Need for Free Access to Indian Legal Information*

When considering needs, we should consider the various audiences that a free access legal information system for India could attempt to serve. At a minimum, the legal profession, government administrators, small to medium businesses (SMEs), NGOs, students and academics, and the general public, can all be considered as somewhat distinct audiences who may value such a service. As is the case in many developing countries, a high quality free access legal information system can have considerable significance for the legal profession, because the majority of lawyers do not have access to the commercial online services for legal information provided by the multinational legal publishers and a small number of Indian commercial providers. Nor do SMEs, NGOs, students and academics, also all potentially significant categories of users. Only a minority of them will be able to afford the cost of accessing most commercial online services. Nevertheless, all of them need to make considerable use of legal resources. Existing resources available for free access from government have serious limitations (discussed in the next section). By and large, these categories of users will be able to cope with the language requirements of a legal system which operates primarily in English, and they will be able to obtain a basic level of Internet access necessary to make use of such a service. The extent to which such a free access service can be made relevant to the needs of the general public in India (and in most developing countries) is a different and more difficult question because of great differences in levels of Internet access, and literacy (particularly in relation to a legal system which still operates largely in English).

## 2. The State of Access to Indian Legal Information to 2010

One aspect of the difficulties of developing a free access legal information system for India can be seen by considering each category of legal information that other LIIs often include, and that we consider to be the "five pillars" of free

access to law: legislation, case law, treaties, law reform and open scholarship.

### *2.1 Legislation*

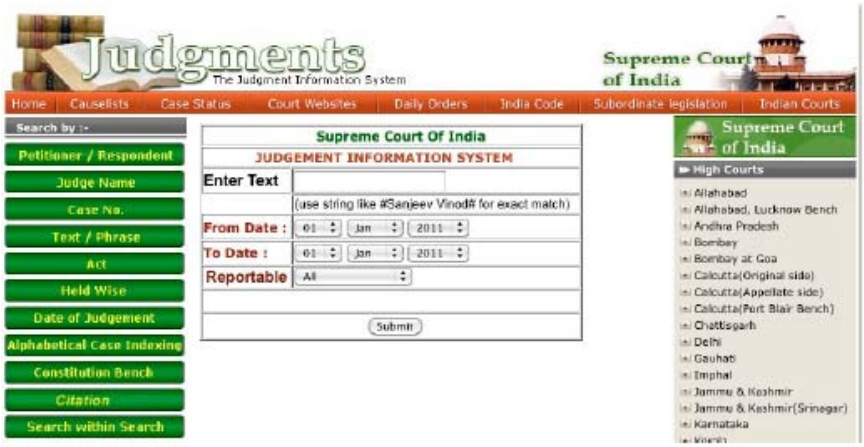
Legislation from the Central government is in theory available online from the "India Code" database[26] provided by India's National Informatics Centre (NIC). The problem is that the NIC database has not included consolidations of acts for many years (consistent consolidation seems to have stopped in the 1990s), and to make matters worse many amending acts are not included either. Central government delegated legislation is only available from departmental websites, if at all. In the states and territories the government offices responsible for legislation only intermittently produce consolidations of legislation, and usually years in arrears, so that this lucrative field is largely left to commercial publishers. The provision of online legislation varies greatly among states, ranging from nearly non-existent to occasionally approaching comprehensiveness of either annual or consolidated legislation. The one government site that attempts to aggregate state and territory legislation only provides a very incomplete coverage because its sources share the defects previously discussed.[27] For the general public, most businesses and litigants, and for most lawyers other than the wealthiest, up-to-date legislation can only be obtained from small publishers in pamphlet form, often sold through outlets such as those shown below.

**Two Legislation Vendors in the Street behind the High Court of Kolkota, April 2011.**

### *2.2 Case Law*

Case law has been provided online, usually for about ten years, by a series of NIC-developed databases for the Supreme Court, twenty-four high courts, six district courts, and most of the larger central government tribunals. Although all of the databases are presented through one central website, the Judgment

Information System (JUDIS),[28] there is no overall search facility. On the one hand this has been a heroic effort, with somewhere between half a million to a million cases being provided for free access. However, it has crippling limitations for serious legal research because of the following factors: (i) the data is spread over more than thirty completely separate databases in different locations, all with search-based interfaces that are different from each of the other court interfaces; (ii) the interfaces are largely impenetrable unless users already know which case they want to find; and (iii) the contents of the databases cannot be browsed, because there are not tables of contents.




**One of Eleven Possible Search Screens in the NIC/JUDIS Interface to Supreme Court Decisions.**

The rather inflexible text search interface for the Supreme Court is shown above. India-wide searching for case law is therefore impossible using these government resources, because each court database has to be searched separately. Even free text word searching is ineffective for most high courts. The comprehensiveness of the JUDIS databases is also an open question: they need systematic testing.[29]

### *2.3 Treaties, Scholarship and Law Reform*

India since independence has always been a very active participant in international law, but its treaties are hard to find. From 1947 to 1980 India's bilateral treaties were published by a commercial publisher in book form, and those treaties are available on the Ministry of External Affairs website[30] but not searchable. Post-1980, the situation is much worse. The online availability of treaties on the Ministry website is sporadic, there is no printed compilation of bilateral treaties, and even the Ministry does not hold a consolidated set in a reproducible form.[31]

India has hundreds of law schools, of very varying quality. Since the formation of the National Law School of India University, Bangalore, in 1987, fourteen National Law Schools[32] have been developed as "stand alone"

universities across India, and former Union Law Minister Moily stated that fourteen more will be developed: "There are now 14 such schools, the idea is to have one national law school in each State".[33] With a small number of new private law schools and a handful of law schools in state universities, they constitute a "top tier" of Indian legal education (though various private law colleges are also highly ranked), and are often of high international repute. However, dedicated online sources of Indian legal scholarship are hard to find. There are no India-wide repositories of legal scholarship equivalent to the Legal Scholarship Network (LSN) on SSRN,[34] or the be Press Legal Repository,[35] or AustLII's Legal Scholarship Library.[36] There is as yet only a scattering of Indian academic law journals on the web. Indian legal scholars generally prefer to publish in foreign law journals because of the low visibility of their own journals. One unfortunate situation is that the Indian Law Institute's *Journal* and *Yearbook* ("Annual Survey"), to which scholars from all over India have contributed for decades,[37] and which are centrepieces of India legal scholarship, have allowed LexisNexis to have exclusive online rights to date. Issues of corresponding benefits to the Institute, and the authors of articles, compared with the benefits of free public access, deserve reconsideration in the emerging very different international information environment for legal scholarship.

Law reform is carried out by many bodies in India. The national Law Commission has made all thirty-six of its reports since 1950 available online,[38] but few state law reform bodies do so (the Goa Law Commission, for example, is exceptional),[39] and nor do most of the bodies tasked with a specific subject of investigation and law reform (the National Human Rights Commission is an exception).[40]

### *2.4 The Key Deficiency: A Lack of Comprehensive Search Facilities*

In addition to the separate deficiencies of each of the existing sources of free access online resources, the over-riding problem is that no free access source have created facilities so that all of these sources – case law, central and state legislation, treaties, open access scholarship and law reform – to be searched together. There is no comprehensive site which allows users to search any one of these "five pillars" of legal information across India, let alone all five of them.

Some non-government free access providers have, however, been taking steps recently to remedy parts of these problems, notably the NGO Parliamentary Research Service (PRS) in relation to legislation, and IndianKanoon in relation to case law. Their efforts are occurring in parallel with the efforts being made by LII of India, and will be discussed later.

## 3. The Building the LII of India after One Year (2011)

We now turn to a project that attempts to build on, enhance and consolidate much of the good work that has already been done by Indian government organisations, and NGOs, to develop free access to legal information in India, and to overcome many of the deficiencies identified in the previous section.

### *3.1 Background: The Free Access to Law Movement and AustLII*

For nearly twenty years various academic-based organisations, initially in the USA, Australia and Canada, have been making public legal information available for free access via the Internet, and have self-consciously done so as a group of collaborating "legal information institutes" (LIIs).[41] Since 2002 they have done so as the Free Access to Law Movement (FALM), which now has over forty members,[42] with an ideology expressed in the *Declaration on Free Access to Law*,[43] based on the rights of individuals to have effective free access to public legal information, and the right of those who wish to republish that information to meet that need to be able to do so.

The Australasian Legal Information Institute (AustLII) has been at the forefront of those developments since 1995,[44] and operates by far the largest and most-accessed online legal resource in Australasia.[45] Since 2000 it has been assisting organisations in other countries to develop free access to legal information in their countries or regions, and also operating three collaborative portals for those FALM members who wish to participate, WorldLII, CommonLII and AsianLII.[46]

### *3.2 Formation of LII of India (2007-2011)*

The LII of India has had a long gestation. In 1999 AustLII had its first discussion with a national law school in India (NLUI, Bangalore via Dr Vivekandan) about expanding free access to Indian law in the context of an Asian Development Bank Project (Project DIAL – Developing the Internet for Asian Law). These discussions were taken up again in 2007, both with (then) Vice-Chancellor Ranbir Singh of NALSAR University of Law in Hyderabad, and with Dr Vivekandan who by then had moved from Bangalore to Hyderabad. When Prof Ranbir Singh took up a new Vice-Chancellorship to start the National Law University, Delhi, two National Law Universities (NLUs) were involved, and NLUI Bangalore soon became the third. These partner NLUs supported AustLII's application to AusAID (Australia's foreign aid agency) for funding under its Public Sector Linkages Program (PSLP) to develop free access to law in South Asia, and funding of AUD 275,000 was eventually granted in late 2009. Database development started at AustLII, and the partners held their first meeting in New Delhi in January 2010. They were joined by Rajiv Gandhi School of Intellectual Property Law, Indian Institute of Technology – Kharagpur, where Dr Vivekandan was Dean for a time. They decided on the name and structure, and aimed to launch a new LII by early 2011. Four other NLUs have become partners since 2010, bringing the total partners to eight: National University of Juridical Sciences (NUJS), Kolkata; Gujarat National Law University, Gandhinagar (GNLU); Tamil Nadu Dr Ambedkar Law University, Chennai (TNDALU); and Rajiv Gandhi National University of Law, Patiala (RGNUL). The March 2011 meeting of the partners decided to leave the partnership structure at eight members until formal incorporation, but to invite other law schools to become Supporting Organisations. Geographical dispersion of workload

across India is seen as crucial to the long-term success of the project. National Law University, Delhi has hosted the two meetings of partners to date, but it is proposed that later meetings will be rotated between NLUs. The Legal Information Institute of India (LII of India) <www.liiofindia.org> aims to be an international standard, free-access and non-profit, comprehensive online collection of Indian legal information. The India technical hub of the project is at NALSAR, with Prof. Vivekanandan as Director, and technical staff yet to be employed. AustLII is providing the initial technical development, with progressive transfer of operations to the Indian partners planned for 2011 and 2012. AustLII's involvement is funded primarily by AusAID (Australia's foreign aid organisation), Chung, "AustLII in 2010 - A Snapshot at Age 15", AustLII (Dec 2010), available at http://www.austlii.edu.au/austlii/publications/2010/1.pdf. but with additional funding (past and present) from the Australian Research Council (ARC).

### *3.3 The Motivations of the Indian Partners*

For the Indian partners in this project, the development of free access to law in the Indian context is based on three important principles which they articulate in their public presentations, and which are consistent with the Free Access to Law Movement's "Declaration on Free Access to Law",[47] which they regard as a basic source of inspiration: (1) Laws are by the people, for the people and of the people, and hence are the property of the society in general; (2) The quality of democracy is directly proportional to people's awareness of, and access to the laws that govern their society; and (3) If information, particularly legal information, is the oxygen of the body politic, it has to be breathed freely. In short, free access to legal resources is expected to contribute toward combating misuse of power, corruption and policy deviations, leading to greater accountability and transparency in shaping healthy democracy, perhaps more than the tokenism of periodic elections that are often construed as democracy. If Indian democracy is to survive it will squarely depend on how a vigilant civil society functions, and this in turn requires free access to legal resources. Kofi Annan, the ex secretary General of the United Nations once remarked "If information and knowledge are central to democracy, they are the conditions for development".[48] A vibrant and dynamic society like India prides itself as an open society and its sustenance requires free access to the laws governing its citizens. The concept and construction of the LII of India is based on these principles, and the Indian law schools involved consider that they have the platform, visibility, and networking capability to make it a reality.

### *3.4 The LII of India website and its launches*

LII of India is at the time of writing a year old and has been open for free access public use since 25 November 2010. LII of India was admitted as the thirty-forth member of the Free Access to Law Movement.[49] The national launch

of LII of India was organised and hosted by the National Law University, Delhi at the Vigyan Bhawan Conference Centre in Delhi on 9 March 2011. The launch was by Union Minister of Law and Justice, Dr M Veerappa Moily, and attended by members of the judiciary, law commissioners, and representatives of the foreign ministry and many agencies. It was followed by "satellite launches" in Hyderabad, Bangalore, and Kolkota during March and April 2011, hosted by the respective National Law Universities in those cities. The system and its contents are gradually becoming known to lawyers, students, and librarians; as such awareness does not happen automatically.


**Launch in New Delhi on 9 March 2011 at Vigyan Bhawan.**

### *3.5 Content Development: The "Five Pillars" in Stage One*

The initial version of LII of India is built largely on the shoulders of existing providers of legal information online, particularly India's National Informatics Centre (NIC), whose data collection efforts since the mid-1990s have resulted in dozens of separate case law and legislation databases. Several law schools, the External Affairs Ministry, and some supporting organisations like the Parliamentary Research Service (PRS), and iKanoon have also provided data. Virtual databases of Indian law developed from content on other LIIs cooperating with AustLII are also included. LII of India aggregates this content, puts it into a more consistent format, and makes it jointly searchable for the first time. India's *Copyright Act 1957* s52(q), like copyright laws in most countries, aids the non-government development of free access by exempting any reproduction of legislation, case law, law reform reports or similar official reports (in broad terms) from copyright infringement.[50] Treaties are not mentioned, but the Indian government has no objection to reproduction of such treaties.[51] Copyright law is therefore not an impediment to the development of LII of India or similar sites.

Nor do Indian government websites use the Robot Exclusion Protocol[52] to block other parties from using web robots or spiders from copying data from their sites.

By the time of the official launches of LII of India in March 2011, the first stage of development had resulted in 109 databases, and by the time of writing (1 December 2011) this had risen to 151 databases, plus four virtual databases where the data is drawn from databases located on other LIIs. However, an equally significant indicator of the size of what has been built is that LII of India now includes a total of 778,848 documents, with databases ranging in size from a few pieces of legislation from small states or territories, to the West Bengal Appellate Court database with over 100,000 documents.

The rate of expansion of content of LII of India is also accelerating. For example, in November 2011, 28,483 documents were added to the system. The main reason for the accelerated growth, and why it can be expected to be sustained, is that full automation has now been achieved for the updating of content from the six most prolific courts (Indian Supreme Court, Delhi High Court, Calcutta High Court, Calcutta Appellate Court, Calcutta High Court Port Blair Branch, and Information Commission of India). We expect that (provided funding is available), the system can continue to expand by over a quarter of a million documents per year for the indefinite future. It is already one of the largest LIIs, and may become the largest in due course.


**Top Front Page of LII of India, Showing Search Options and Recent Additions.**

The current content of LII of India and some of its limitations will now be outlined briefly, stating only at this point what content is included. Material which is still planned to be added under Stage 2 of content development is discussed later.

*Legislation* – There are ninety-three legislation-related databases with about 7,000 items of legislation: the India Code from 1836 (1248 acts); central government bills; the Constitution; acts from thirty-one states and territories (about 2,500 acts); regulations from twenty-eight states and territories (about 2,000); twenty-nine databases of "schemes" (other types of delegated regulations); commentary on central government acts (provided by the Parliamentary Research Service); and central government bills (recently again available from the Lok Sabha (Parliamentary) website).[53]

*Case Law* – There are forty-three databases of Indian case law comprising over 750,000 cases in full text: the Supreme Court from 1947; twenty-three high courts; nine district courts; six central government tribunals (those concerning electricity; railways; administrative decisions; right to information; cyber disputes; and IP); plus two virtual databases, one of cases concerning India from the pre-1873 *English Reports* (virtual database from CommonLII) and the other of cases concerning India in international courts and tribunals (virtual database from WorldLII).

*Treaties* – There are two databases: all Indian bilateral treaties to 1980, plus some subsequent bilateral treaties; plus a virtual database of Indian bilateral treaties found on other LIIs (from WorldLII and other LIIs).

*Law Reform* – Included so far are the eighty most recent reports of the Law Commission of India since 1999,[54] and the others are being added.

*Scholarship* – There are thirteen law journals included,[55] eight of which are from the partner NLUs in LII of India (NUJS, NALSAR, GNLU and NLIU); plus one virtual database of articles about Indian law in other law journals (from other LIIs).

There is still considerable work to do on Stage One, primarily the extraction of case law from the remaining JUDIS databases, which will add another 200,000 decisions at least. But the phase of aggregation of existing web-sourced data from government resources is well underway (and complete for the largest courts and tribunals), subject to the continuing challenges of updating of databases. The different and more difficult tasks of sourcing data for Stage Two lie ahead.

### *3.6 Design Considerations*

Design considerations in the development of LII of India included that the interface should be straight-forward but informative of the various search and browsing options that the complexity of the Indian legal system makes necessary. It needed to enable the data to be searched over the whole system simultaneously, or over only a particular type of data (e.g. case law), or for only a specific state or territory. Because the quantities of data to be searched are so large, fast search speed is essential. Finally, the nature of the Indian legal system makes it acceptable to start with a system that is based on English, for reasons already indicated and discussed in more detail later. As can be seen from the first line of the front page extract below, each of the "five pillars" of content types

described above can be separately searched or browsed. However, what is more important is that each state's or territory's databases can be searched separately, with the case law, Acts, regulations, and other relevant databases for the state or territory all being able to be searched together. This is not possible on any of the government-provided sites. In Stage One, this is often limited to the high court decisions for a state, its acts, and its regulations (to the extent that each of these is available online). In some cases there is also a district court, and occasionally a law journal from a NLU located in the state. This is illustrated later in relation to West Bengal. As can be seen from the screen extract below, the facility is available for all thirty-six states and territories.


**Extract from Front Page of LII of India, Showing Access to Databases by Type, and by State and Territory.**

Stage One has also incorporated a number of features found on other LIIs developed by AustLII, including a catalogue of hundreds of Indian law-related websites[56] (also categorised by state and territory, as illustrated below), and a "Law on Google" feature which translates LII of India searches into Google syntax, and limits their scope to legal materials from India (and where appropriate to a specific state or territory). LII of India therefore offers as many different ways to find free access online legal information, whether in its own databases or not, as can be provided.

Another design consideration is that LII of India's content should also be searchable from the other free access to law portals, CommonLII, AsianLII, and WorldLII.[57] Users who find LII of India content through searches over these portals are returned to LII of India to view the content. The file structure of LII of India has been organised in a similar way to the file structure of these portals, so as to make it much easier to include this content in their searches.

### *3.7 Technical Facilities*

LII of India is using the AustLII-developed open source Sino search engine[58] and other AustLII-developed tools on a Linux platform. The search

engine, used by other LIIs,[59] enables Boolean and proximity searching; gives flexible displays of results (by relevance, by date, by database and by citation frequency). LII of India has relatively consistent formatting of data across Indian jurisdictions, insofar as the source data permits; large scale automated addition of hypertext links among cases, legislation, treaties, law journal articles and law reform reports; and provision of "noteups" from texts to where they are cited.[60]

LII of India also has automated extraction of parallel citations and creation of citation tables by the AustLII-developed LawCite citatory,[61] which includes citation data drawn from the twelve LIIs collaborating in WorldLII, resulting in citation records for approximately four million cases, journal articles and treaties. The LawCite international citator is also integrated into the search results of LII of India, showing the subsequent citation histories (in India and overseas) of 496,000 Indian cases law journal articles and treaties. More citation data will be extracted in due course, once further work is done on the automated recognition of unique India patterns of case law citations, and on how use can be made of them in a variety of document formats. An example of LawCite as an international citator is the Indian Supreme Court decision in *Indian Express Newspapers Bombay (P) Ltd v Union of India* [1984] INSC 230; (1985) 2 SCR 287; (1985) 1 SCC 641; [1985] SCC (Tax) 121; 1984 2 SCALE 853, which the LawCite record shows has been cited sixty-seven times, including by courts in Lesotho and South Africa, as well as by numerous Indian courts.

At present the LII of India server is located at AustLII. A staged transfer of processing control between production servers and mirror servers, in Australia and India, will start once an AusAID-funded mirror server is acquired and installed in Hyderabad, and technical staff are employed there. Scanning, comprehensiveness checking, content acquisition and other labour-intensive tasks will be distributed geographically among the partner and supporting law schools in India, with an initial distribution of responsibilities having been agreed at the March 2011 meeting of partner law schools.

### *3.8 Usage*

By December 2011 the LII of India website is receiving over 6,000 page requests per day, and will have received approximately 2.25 million accesses in the 2011 calendar year. This is a respectable result for the first year while databases are still developing, but is only a fraction of the expected long-term usage rate. Because search engine web spiders are blocked from accessing any case law databases (over 95% of all files), almost all of these accesses are by real users, not by search engines spiders.

As might be expected, the most-accessed case law databases were those of the central government courts and tribunals (67,000 accesses per month) and West Bengal courts (11,000 accesses per month). For legislation databases the most accesses were to central government legislation (9,000 accesses per month) and West Bengal legislation (500 accesses per month). The significant usage of

West Bengal databases reflects the quantity and quality of the content available from one state on which we are focussing initial development efforts. The small collection of law journals receives 2,500 accesses per month, and the law reform reports and treaties receive about half that usage.

It is impossible to establish the percentages of this usage which comes from Indian users, because 88% of all accesses come from numerical IP addresses which cannot be resolved into domain names (e.g. with the ".in" suffix), due to incomplete server configuration. Of the 12% of usage which does come from geographically identifiable addresses, usage from India and Australia are each about ten times larger than from any other country. It seems reasonable to infer (or at least, to speculate) that the majority of LII of India usage comes from India, from incompletely configured servers, but the precise percentages must remain undetermined. There is also significant identifiable usage (at least 10% of the Indian identifiable usage) originating from the UK, USA, Malaysia, Canada, South Africa, and Pakistan, as well as from Australia.

In summary, the usage is modest but satisfactory, the most popular databases are those with the largest amount of content, and the locations of users seem to be mainly from India but with significant international usage as well.

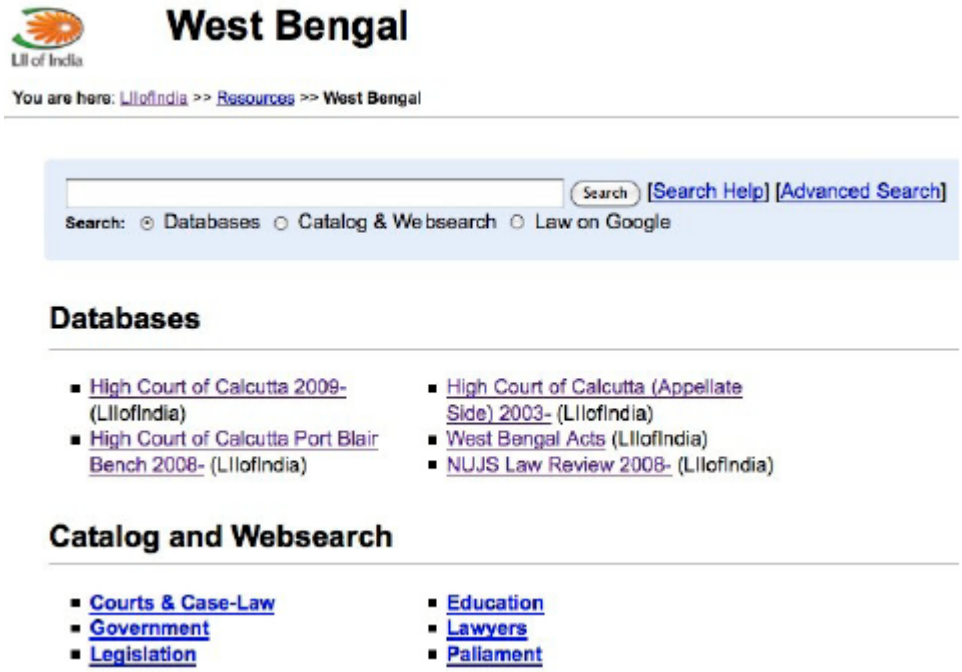
**4. Future plans and challenges**

The future of LII of India depends on a number of factors, including the establishment of an effective technical team and servers in India, an Indian-based governance structure, collaboration with organisations in India with similar goals, establishment of local financial sustainability, and continuing technical support from AustLII during the establishment phase. While these elements of long-term sustainability are being achieved, stage two of content development continues.

***4.1 Content Development: Stage Two***

The second stage of content development, now beginning, involves as its key focus the capture of additional case law and legislation not already digitised, from all thirty-six jurisdictions, and from sources spanning jurisdictions. This is a huge task, requiring a decentralised data collection approach. In additional to the five initial Indian partners, other supporting and collaborating institutions are being sought, primarily in the academic sector, to give as broad an "ownership" of LII of India as possible, and so as to decentralise the difficult task of obtaining data at the state and territory levels. Take the State of West Bengal as an example of what needs to be done in a single state. West Bengal was home to the world's first and most long-lived elected Marxist government. The Bengal Presidency, based in Calcutta (now Kolkota), was also one of the origins of common law courts in India (with the Madras and Delhi Presidencies). The West Bengal home page at present includes three databases. The High Court of Calcutta, High Court of Calcutta (Appellate) and High Court of Calcutta (Port Blair Bench) databases

between them contain over 200,000 decisions since 2000. The West Bengal Acts database contains 364 items of legislation from 1848 to 1984 (provided by PRS Laws of India), and a few subsequent acts. The West Bengal page also includes the law journal of the National Institute of Juridical Science (NUJS), Kolkota. NUJS has also agreed to develop an "NUJS Law Research Series" database, a repository for all legal scholarship from one of India's leading NLUs. Much is still to be done before this is as valuable as possible a research facility for West Bengal law. NUJS has agreed to test the comprehensiveness of the three West Bengal High Court databases against a list of the 100 most significant cases in West Bengal law from the last decade, to assess whether they are all included in the databases (or what is the percentage of inclusion). To improve the legislation, NUJS has provided the West Bengal Code to 2003 (10 volumes) to AustLII to scan and OCR, and the annual volumes of legislation since 2003. The databases created from this legislation will then be provided to PRS Legislative Research for use on their Laws of India service[62] if they wish, as well as being made available on LII of India.




**West Bengal Home Page with Search Options, Databases, and Catalogue.**

Across India as a whole, Stage Two development requires further work on each of the "five pillars" of free access, and much of it will require the work and cooperation of partner and supporting law schools in the relevant states:

- *Legislation* – Missing as yet are the majority of annual acts from states, most consolidated acts (central or from states), and bills from states. Discussions are ongoing with PRS Legislative Research concerning comprehensive cooperation in relation to provision of free access Indian legislation from all jurisdictions. The digitisation of printed statutes from selected priority states, commencing with West Bengal, will indicate what demand there is for this information.
- *Case law* – Case law from important state inferior courts and tribunals needs to be obtained. The comprehensiveness of the high court database for each state needs to be checked. As soon as possible, active cooperation with NIC/JUDIS is necessary so that a direct email feed of case law (if possible) is provided in replacement of the current very inefficient and costly methods of extracting data from form-based court websites.
- *Treaties* – Paper or soft copies of missing post-1980 bilateral treaties need to be obtained from the Ministry of External Affairs, and digitised where necessary. This may require cooperation from the Indian Society of International Law (ISIL).
- *Law reform* – The first 156 reports of the Law Commission of India are still to be added, but this is underway as part of completion of Stage One. Reports of state law reform bodies need to be obtained and digitised where they are not already in digital form. Reports from important central government bodies such as the National Human Rights Commission also need to be added.
- *Legal Scholarship* – The law journals from as many Indian law schools as possible need to be obtained and digitised, from both partner law schools and those others wishing to provide their journals. All partner law schools, and then other law schools, need to be encouraged to provide scholarship repositories ("Law Research Series"). The cooperation of the Indian Law Institute in providing its journal and yearbook ("Annual Review") for free access needs to be sought.

Identification of a Stage Two invites the question of what would be in a Stage Three. One aspect is that most LIIs have started with a focus on current law, and LII of India is no exception, with the decisions of most high courts only going back a decade or so. The digitisation or other acquisition of India's rich history of development of the common law would be a valuable task once more immediate priorities are resolved. So would the provision of consolidated legislation where it is not yet available.

**4.2 Collaboration**

Seeking cooperation with all those involved in the provision of free access to Indian law will probably be the key to the successful development of LII of

India, because the task of capturing all the relevant data is too large for any one organisation. The very extensive IndianKanoon[63] (iKanoon) search engine for Indian case law is sharing its case law with LII of India (content is still being processed from its collection), and LII of India has offered to do likewise with those databases iKanoon does not hold. Cross-use of data extraction software is also being considered. Senior personnel from PRS, and iKanoon have agreed to join an LII of India Technical Advisory Committee[64] once LII of India has its own technical staff.

The other key element of cooperation is of course that provided by the NLU (national law university) partners in LII of India, and NLUs and other law schools who wish to support this development in their states. The commitments made by NUJS in relation to development of the West Bengal databases are a model which now needs to be successfully applied to law schools willing to cover all other states and territories. It will be a long process, but it should ultimately give India a sustainable LII.

### *4.3 Languages other than English*

As explained earlier, English has a unique position as an "associate" official language in India's law and constitution, and continues to be widely spoken in both north and south to an extent matched by no indigenous language. English continues to be the language of most legislation in India, though some state and territory legislation is in local languages. All bills, acts and regulations, of both the centre and the states and territories, must be in English unless legislation of the Indian Parliament provides otherwise.[65] Where a state legislature does prescribe local languages for legislation, an English language translation published in the *Official Gazette* of the state is deemed to also be an authoritative text.[66] The India Code is available in Hindi. Languages other than English may be used in proceedings of the high courts of a state or territory (but not in the judgments or orders of such courts), by agreement of both the governor of a state, and the President of India, in accordance with constitutional requirements.[67] Judgments of lower courts may be in languages other than English. The use of Hindi has been approved in various state courts. There are proposals that Tamil should be the official court language in the Madras High Court.[68] Where legislation or orders made under it are available in translation from English (or vice-versa), the *Copyright Act 1957*, s52(r) also allows liberal use of such translations by republishers such as LII of India.[69] It is sufficient to say that Indian legislation, court decisions (at least of lower courts), and other public legal information, are likely to be available increasingly in languages other than English in future. While the position of English in India's legal system is protected very strongly in Indian law, the Indian legal system is likely to gradually become more multi-lingual. English is also only spoken by a minority of people in India. For both reasons, it will be necessary at some point in the further development for LII of India to aim to incorporate legal documents in other Indian national languages. This requirement introduces technical

complexities, because Indian languages require the use of double-byte representations, and cannot be searched in the same way as the Roman alphabet used by English which employs a single-byte representation. However, AustLII's Sino search engine, used by LII of India, has a multi-lingual search capacity allowing simultaneous searching and ranking of documents in languages with different representations. As yet, this capacity has only been employed for the simultaneous searching of English and Chinese, for the Hong Kong Legal Information Institute and the Asian Legal Information Institute.[70] It should be possible to develop this capacity so that LII of India can simultaneously search and rank documents in English and Indian languages.

**4.4 Sustainability and Governance**

A trust, charitable company or other appropriate entity will be formed to provide the governance structure for LII of India, with assistance from an Advisory Committee. There is now an Interim Management Committee comprising representatives of the partner Law Schools and AustLII. The AusAID project is an appropriate management vehicle for the project while AusAID funding of the project continues, but a more permanent structure will then be needed. Establishing financial sustainability from local funding sources is crucial, as an Indian system is not likely to obtain ongoing foreign aid funding. A central government start-up grant is possible, and is being pursued. Funding solely from the legal profession is considered by the Indian partners not to be feasible in India, though it may be possible to obtain some level of contributions. One funding model under consideration involves soliciting voluntary contributions from a diverse range of contributors including governments and academic sources using the model employed by AustLII.[71] A third element of sustainability is that AustLII intends to continue providing technical assistance to LII of India for so long as it is requested (subject to AustLII's own capacity to do so), irrespective of the availability of funding assistance. AustLII continues to provide such assistance other LIIs that it has assisted to develop, in keeping with the cooperative aspirations of the Declaration on Free Access to Law.

**5. Conclusions**

Beyond the questions of whether the LII of India will prove to be valuable to India's lawyers, students, businesses, administrators, and citizens at large, we should ask some broader questions to conclude. Might this India experiment be valuable as a model for creating free access to legal information in some other equally complex countries? And what is the significance of free access to legal information (no matter who provides it) for India's vibrant democracy?

***5.1 A Model for Assisting LII Development?***

There are many ways in which established LIIs can assist in the development of new LIIs, in order to further the global spread of free access to legal information and the objectives of the Free Access to Law Movement.

Although the development of LII of India is far from complete, it may demonstrate key elements of one model for successful LII development, such as the following:

- Early identification by an established LII of local partner organisations with substantial non-commercial reasons to wish to establish free access to law, and their involvement in all stages of the project.
- Adoption of a broad approach to content acquisition, including all "five pillars" of free access content, so as to create a LII with the richest possible search results and serving the broadest audience.
- Utilisation of available online resources to build an initial system quickly, with impact.
- Active collaboration by local partners to source data previously not available online.
- Active collaboration with other free access to law providers, particularly from the NGO sector, including swapping and sharing of database content.
- Continuation involvement by the established LII in technical assistance, and possibly in governance.
- Development of a funding model relying on diverse sources of funding. The tentative view of all the partners involved in the development of LII of India is that this approach is paying dividends for India, though there is much work to be done before it can be demonstrated that the model has been successful and sustainable.

### *5.2 A Necessary Element in India's "Monitory Democracy"?*

If India is a pioneer of the notion of "monitory democracy", then one of the key mechanisms of accountability of government decision-making must be open access to government information. Without guaranteed access to information about what government does, extra-parliamentary institutions have no possibility of making government's accountable. The enormous success of the right to information movement in India over the last decade is therefore crucial to its monitory democracy. Surprisingly, this is not explicitly recognised as a key element in Keane's account either of monitory democracy generally or of the Indian example. It is part and parcel of this argument to say that an essential element of any monitory democracy must be that citizens have effective and up-to-date access to the laws that govern both them, and (in a society based on the rule of law) also govern the powerful institutions of society in both the public and private sectors. For NGOs representing citizens or criticising governments or polluters, for small businesses wanting to assert their rights against cartels or unfair competitors, or for lawyers without the assets of national or multi-national law firms wanting to defend their clients against abuses of power, such access to

legal information is essential to enable their roles in making the institutions of monitory democracy work as they are designed. Both India's public institutions that provide a basic form of such access, and the Legal Information Institute of India and similar NGOs adding value to that legal information, are playing an essential role in India's emerging monitory democracy.

**Endnotes**

1. The main source of this formula is Free Access to Law Movement *Declaration on Free Access to Law*, Montreal, 2002, as amended, at <http://www.fatlm.org/declaration/>; for background see G Greenleaf, "Free Access to Legal Information, LIIs, and the Free Access to Law Movement", in R Danner and J Winterton (eds), *IALL International Handbook of Legal Information Management* (Aldershot, Burlington VT: Ashgate, 2011), available at <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1960867>.
2. B Chandra, M Mukherjee and A Mukherjee, *India since Independence* (New Delhi: Penguin, 2008), at 62-5.
3. *Ibid.*, ch 2.
4. See http://www.liiofindia.org/in/cases/cen/INSC/.
5. B Chandra, M Mukherjee and A Mukherjee, see note 2 above, ch 8.
6. *Ibid.*, at 77-80.
7. http://www.liiofindia.org/in/legis/wb/act/
8. J Keane, *The Life and Death of Democracy* (London: Pocket Books, 2010), at 622-623.
9. See a list of fifteen such tribunals at http://www.worldlii.org/catalog/56666.html.
10. See http://www.liiofindia.org/in/cases/cen/INCIComm/.
11. The autocracy of the Emergency of 1975 to 1977 and communalism of 2002 to 2004. See B Chandra, M Mukherjee, and A Mukherjee, see note 2 above at chs 18 and 36 and J Keane, see note 8 above, at 618-619 and 637-647.
12. J Keane, see note 8 above, at 627.
13. Keane notes that a similar term, "monitorial democracy" has been used by US scholar Michael Schudson, who has influenced his approach. See J Keane, see note 8 above, at 688 in footnote. Keane also uses the term "banyan democracy" in relation to India, showing why the banyan tree is a very appropriate metaphor for the features of monitory democracy. *Ibid.*, 630-631. But to a lawyer, "banyan democracy" is too close to the dismissive phrase "palm tree justice" to have positive connotations.

14. *Ibid.*, 629-630.
15. *Ibid.*, 630.
16. See http://ipaidabribe.com/
17. Tamil Nadu, Goa, Rajasthan, Delhi, Maharashtra, Assam, Madhya Pradesh, Jammu, and Kashmir.
18. (2004) AIR 2004 SC 1442.
19. See for example J Keane, see note 8 above, at 585-647.
20. N Nilekani, *Imagining India: Ideas for a New Century* (London: Allen Lane, 2008), at 77, and see generally 77-94.
21. B Chandra, M Mukherjee and A Mukherjee, see note 2 above, at 123; and see generally 113-124; see also N Nilekani, note 20 above, at 77-85.
22. B Chandra, M Mukherjee and A Mukherjee, see note 2 above, at 124.
23. Discussed in more detail below at "Languages Other than English".
24. N Nilekani, see note 20 above, at 77.
25. Wikipedia article "List of Countries by English-Speaking Population" at http://en.wikipedia.org/wiki/List_of_countries_by_English-speaking_population.
26. India Code http://indiacode.nic.in/. See the "About the India Code" page which implies that the legislation found there is "available in up-to-date form", when this is not so. The Acts have not been consolidated for some years, although they were originally when the service was established in the mid-1990s.
27. On the India.Gov site, see the Acts http://india.gov.in/govt/acts.php and Rules & Regulations http://india.gov.in/govt/rules.php pages.
28. JUDIS at http://judis.nic.in/.
29. Instances of leading cases being missing from the database have been found by the authors, but systematic testing has not yet been done.
30. Ministry of External Affairs website http://www.mea.gov.in/.
31. Personal communication from a senior officer of the Ministry (Jan 2010).
32. See list of National Law Schools and links at http://www.austlii.edu.au/catalog/56662.html.
33. 'Moily Inaugurates CLEA and Talks of 14 More National Law Schools', *Bar & Bench* (30 Jan 2011), at http://barandbench.com/, quoting from *The Hindu*.
34. http://www.ssrn.com/lsn/index.html.
35. http://law.bepress.com/.

36. http://www.austlii.edu.au/au/journals/.
37. Indian Law Institute's publications page available at http://www.ilidelhi.org/publication.htm.
38. http://lawcommissionofindia.nic.in/.
39. http://goalawcommission.gov.in/reports.htm.
40. http://www.nhrc.nic.in/.
41. See G Greenleaf, "Free access to legal information, LIIs, and the Free Access to Law Movement", in R Danner and J Winterton (eds), *IALL International Handbook of Legal Information Management* (Aldershot; Burlington VT: Ashgate, 2011), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1960867.
42. See "Members of the Free Access to Law Movement (FALM)", available at http://www.fatlm.org/.
43. Free Access to Law Movement, "Declaration on Free Access to Law" (2002 and subsequent amendments), available at http://www.fatlm.org/declaration/.
44. See G Greenleaf, A Mowbray, and P Chung, "AustLII: Thinking locally, acting globally" (2011) *Australian Law Librarian*, 101-111, available as (2011) UNSWLRS 41 at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1960878. See also G Greenleaf, A Mowbray, and P.
45. http://www.austlii.edu.au; AustLII receives over 650,000 page accesses per day, and has nearly 500 databases.
46. WorldLII Legal Information Institute http://www.worldlii.org; Commonwealth Legal Information Institute http://www.commonlii.org; Asian Legal Information Institute http://www.asianlii.org
47. Free Access to Law Movement, see note 43 above.
48. See http://www.brainyquote.com/quotes/authors/k/kofi_annan.html.
49. "Members of the Free Access to Law Movement (FALM)", see note 42 above.
50. S. 52 exempts from being an infringement of copyright: "(q) the reproduction or publication of—(i) any matter which has been published in any Official Gazette except an Act of a Legislature ; (ii) any Act of a Legislature subject to the condition that such Act is reproduced or published together with any commentary thereon or any other original matter; (iii) the report of any committee, commission, council, board or other like body appointed by the Government if such report has been laid on the Table of the Legislature, unless the reproduction or

publication of such report is prohibited by the Government; (iv) any judgment or order of a court, tribunal or other judicial authority, unless the reproduction or publication of such judgment or order is prohibited by the court, the tribunal or other judicial authority, as the case may be".

51. Personal communications with Indian Ministry of Foreign Affairs (Jan 2010) and subsequent development on LII of India of databases of Indian treaties without objection from the Ministry.
52. See the Web Robots Page http://www.robotstxt.org/.
53. http://164.100.24.209/NewBios_search/Report3.aspx?house=bh&typ=All&year=2011&sort=0&stitle=bill.
54. http://www.liiofindia.org/in/other/lawreform/INLC/.
55. GNLU Journal of Law, Development and Politics, Indian Journal of Constitutional Law, Indian Journal of Intellectual Property Law, Indian Journal of Intellectual Property Rights, Indian Journal of Law and Economics, Indian Journal of Law and Technology, ISIL Year Book of International Humanitarian and Refugee Law, NALSAR Environmental Law and Practice Review, NALSAR Law Review, NALSAR Media Law Review, NALSAR Student Law Review, and NUJS Law Review.
56. The top-level India page of the catalogue is at http://www.worldlii.org/catalog/221.html.
57. See addresses in earlier footnote.
58. Available from the Sino directory http://www.austlii.edu.au/techlib/software/sino/.
59. Namely AsianLII, AustLII, BAILII, CommonLII, CyLaw, HKLII, LiberLII, NZLII, PacLII, SAFLII and WorldLII; full names and web addresses of all these LIIs are at http://www.fatlm.org/.
60. See details of search and navigation functions in *Quick Guide to LII of India* http://liiofindia.org/liiofindia/guide/current.pdf.
61. See http://www.austlii.edu.au/cgi-dev/lawcite.pl?juris=india (at the top of the LII of India front page) for all Indian cases available through LawCite.
62. Laws of India at http://www.lawsofindia.org/index.php.
63. IKanoon at http://www.indiankanoon.org/.
64. Chakshu Roy from PRS and Sushant Sinha from iKanoon.
65. Indian Constitution, Art 348(1).
66. Indian Constitution, Art 348(3).

67. Art 348(2) of the Constitution provides that "…the Governor of a State may, with the previous consent of the President, authorise the use of the Hindi language, or any other language used for any official purposes of the State, in proceedings in the High Court having its principal seat in that State: Provided that nothing in this clause shall apply to any judgment, decree or order passed or made by such High Court".

68. "Indian Law: Tamil as Language in Courts", available at http://www.lawisgreek.com/indian-law-tamil-as-language-in-courts.

69. S 52 exempts from being an infringement of copyright: "(r) the production or publication of a translation in any Indian language of an Act of a Legislature and of any rules or orders made thereunder- (i) if no translation of such Act or rules or orders in that language has previously been produced or published by the Government; or (ii)where a translation of such Act or rules or orders in that language has been produced or published by the Government, if the translation is not available for sale to the public: Provided that such translation contains a statement at a prominent place to the effect that the translation has not been authorised or accepted as authentic by the Government".

70. A Fung, K Pun, and P Chung, "Searching in Chinese: The Experience of HKLII", Proceedings of the Law via Internet Conference, University of Hong Kong, June 2011.

71. See AustLII 2011 Funding Sources, available at http://www.austlii.edu.au/austlii/sponsors/.

# PUBLIC DOMAIN RESOURCES IN LEGAL RESEARCH

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## 1. Introduction

The rapid evolution of knowledge societies continue to provide new means for achieving progress in all sectors of work and life through the increasing use of information and communication technologies (ICTs) such as computers and networks. While ICTs have greatly facilitated the movement and handling of data, the process of generating and validating information and knowledge remains essentially one of human creativity.[1] Tony Laidig (2007) explains public domain as the body of knowledge and innovation (especially creative works such as writing, art, music, and inventions) in relation to which no person or other legal entity can establish or maintain proprietary interests. This body of information and creativity is considered to be part of the common cultural and intellectual heritage of humanity, which in general anyone may use or exploit. If an item is not in the public domain, this may be the result of a proprietary interest as represented by a copyright or patent. The extent to which members of the public may use or exploit an item in relation to which proprietary interests exist is generally limited. However, when copyright or patent restrictions expire, works will enter the public domain and may be used for any purpose by anyone.[2]

## 2. Status of Legal Research in India

Research is an attempt to generalize new knowledge including studies that aim to generate hypothesis as well as studies that aim to test them. The New Chamber Dictionary defines research as a careful search and systematic investigation towards increasing the sum of knowledge. Legal Research is an art of findings, analysing and compiling of legal information for presenting point-of-view of researchers in support of research. Legal Research is a multi-dimensional process requires a vast knowledge of information resources with methods and procedures of its applicability to conclude general to particular logic in support of accurate and most relevant findings. Development of legal research is supported by a number of research institutes in India. Indian Law Institute established in 1956 publishes reputed publications along with two regular publications i.e. Journal of Indian Law Institute and Annual Survey of India Law.

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Indian Society of International Law is another major institution established in 1959 and supports legal research especially in International Law.

**3. Origin & Development of Public Domain Resources**

Development of open access started in the USA and initially carried by the Department of Education's Office of Educational Research and Improvement and the National Library of Education launched Educational Resources Information Center (ERIC) in 1966. Advanced Research Projects Agency Network (ARPANET) was launched by the U.S. Department of Defence on August 30, 1969. Online Book page containing full text books in .pdf or HTML format was launched in 1993 by John Mark Ockerbloom.[3] Project Gutenberg-DE was launched by Gunter Hille in 1994. Various free online databases providing leading articles were also launched.[4] Social Science Research Network was introduced by Wayne Marr and Michael Jensen in October 1994 covering more than a million articles with a sound search engine.[5] Internet Achieves project was founded in 1996 facilitating scanned copy of books and other materials. Open Archive Initiatives was launched in 1999. A major step towards open access movement is the launching of Wikipedia by Jimmy Wales in 2001.[6] HP-MIT released DSpace in 2002 OAI-compliant open-source software for archiving e-prints and other academic content. The Directory of Open Access Journals was launched by Lund University financed by Open Society Institute in 2003, covering list of almost all academic and research journals available full text for open access all over the world.[7] In 2004 Google launched Google Print, Google Publisher and Google Library programmes providing scanned copy of books with the consent of publishers. In the same year Google launched Google Scholars covering scholarly articles published in esteemed journals. In 2006 Informatics India launched Open J-gate with search facilities of open access journals.[8] In 2006 Microsoft launched Live Academic Search. In 2007 WorldSciNet established open access to its all 133 journals.[9]

India's National Knowledge Commission, a high level advisory body to the Prime Minister of India, constituted a Working Group on open access and open educational resources in 2006 with a view to enhance students' access to previously inaccessible information as well as the knowledge on how to access global educational resources. The Working Group has been formed with the objective to provide free and open digital publications of high quality materials organized as courses that include lectures, related reading materials, snapshots of discussions, assignments, evaluations, etc. "The Report of National Knowledge Commission on Libraries[10]" states that primary responsibilities to generate digital publications must be assigned to subject specialists related to courses over all universities. The National Program on Technology Enhanced Learning (NPTEL) at IIT Bombay has been launched entitled 'Eklavya'.[11] IIT Bombay has also developed an Open Source Educational Resources Animation Repository (OSCAR). OSCAR provides web-based interactive animations for teaching various concepts and technologies. E-Grid is another programme supported by

Ministry of HRD & IIT Kerala launching subject based content development in digital format especially in science and technology. The working group of National Knowledge Commission in its report has also recommended launching a national e-content and curriculum initiative.

**4. Legal Public Domain Resources Initiatives**

**4.1 Free Access to Law Movement**

The Declaration on Free Access to Law defines "Public legal information to be legal information produced by public bodies that have a duty to produce law and make it public. It includes primary sources of law, such as legislation, case law and treaties, as well as various secondary (interpretative) public sources, such as reports on preparatory work and law reform, and resulting from boards of inquiry. It also includes legal documents created as a result of public funding.[12] Cornel University of United States took pioneering efforts towards facilitating free access to law. Legal information institutes of the world, meeting in Montreal,[13] declare that: a) Public legal information from all countries and international institutions is part of the common heritage of humanity. Maximizing access to this information promotes justice and the rule of law; b) Public legal information is digital common property and should be accessible to all on a non-profit basis and free of charge & c) Organizations such as legal information institutes have the right to publish public legal information and the government bodies that create or control that information should provide access to it so that it can be published by other parties.

**4.2 Unesco and Public Domain Information Recommendations**

In a major step towards recommendations of public domain information resources, Unesco issued a "Policy Guidelines for the Development and Promotion of Governmental Public Domain Information" Unesco's recommendations on promotion and Use of Multilingualism and Universal Access to Cyberspace explained Public Domain Information specified the following:

> *"Public domain information refers to publicly accessible information, the use of which does not infringe any legal right, or any obligation of confidentiality. It thus refers on the one hand to the realm of all works or objects of related rights, which can be exploited by everybody without any authorization, for instance because protection is not granted under national or international law, or because of the expiration of the term of protection. It refers on the other hand to public data and official information produced and voluntarily made available by governments or international organizations."*

The Unesco movement towards setting of public domain guidelines supports the availability of free public access to law. Legal information like Case Law, Legislations and other Government Documents performs a greater role in awareness of duties and responsibilities to the citizens. If law is accessible to all,

there is comparatively less chance to be a victim of fraud and corruption especially among developing countries.

**4.3 Role of International Organization in Free Access to Law Movement**

**Unesco** database contains 120000 free downloadable documents in six official languages covering all Unesco fields of competence since 1945. The Unesco Library provides reference and information services, including research, to the Organization as a whole, as well as to the general public with an interest in Unesco's fields of competence. Unesco portal also presents the Archives, which document the Organization's history and provides access to all official correspondence, documents, publications, multimedia and electronic records.

The **International Court of Justice** website disseminates free proceedings including judgments, advisory opinions and orders; pleadings, oral arguments, documents, act and documents, yearbook and bibliography.

The **International Criminal Court** (ICC) portal provides information regarding structure of court, situations and cases, hearing schedule, referrals and communications, press and media, court reports and statements, annual reports and activities.

Since the establishment of the **Court of Justice of the European Union** www.curia.europa.eu/jcms/j_6/ in 1952, approximately 15000 judgments have been delivered by the three courts. The Reports of Cases are published in the official Community languages and are the only authentic source for citations of decisions of the Court of Justice and the Court of First Instance.

The Web portal of **United Nation** www.un.org facilitates current news, in focus, conference meeting events, global issues and resources and services. Resources and services part provides information in sub divisions like documents, library, maps, publications, employment, bookshops, procurement, internships, stamps, databases etc.

**5. Countries Based Legal Information Resources**

With the birth of Free Access to Movement declaration and Unesco's recommendations for maintaining and facilitating legal and law related public information, most of the countries have started to make it available governmental information through its official web portals.

**5.1 Australia**

The **High Court of Australia** is the highest court in the Australian judicial system. The Publication section contains annual reports, High Court Bulletin, Judgement Summaries, Speeches, Judgements, Transcripts, Special Leave Dispositions and other brochures in various formats including HTML, pdf etc.

**ComLaw** is the website as well as the software and databases that contain complete legislative summaries of Australian Government. ComLaw content is

sourced from more than 70 separate agencies. ComLaw is a collection of information including historical and current constitution of Australia, acts, legislative instruments, bills and other legislative instruments. Australian Consolidated Acts can also be retrieved through **Australian Legal Information Institute** portal maintained by AUSTAD. Legislations are arranged alphabetically as well as year wise. Advance search engine has also been created to search pinpointed legislation through title, text, year of introduction etc.

Established in 1975, the **Australian Law Reform Commission** facilitates public access to its work and all final reports and recent consultation papers available for free download. Publication sub section contains alphabetical list of its publication and reports for browsing search. Search option through searching box is also provided for searching exact phrase or word.

### 5.2 Canada

The **Supreme Court of Canada** is Canada's final court of appeal, the last judicial resort for all litigants, whether individuals or governments. Information like judgments, news releases, cases, electronic filing library, act and rules of court can easily be browsed on the web page i.e. http://www.scc-csc.gc.ca/home-accueil/index-eng.asp . The first case reported, published in 1877, was for an appeal heard in 1876 from the Supreme Court of Judicature of Prince Edward Island.

**Consolidated Statute** or Legislation of Canada is freely accessible by the efforts of Candaian Government through its web portal **Law Site** at http://laws-lois.justice.gc.ca/eng/index.html . Law Site espacially designed to search Candian Laws and Regulations facilitates point-in-time access to all consolidated acts and regulations. The web page has four sub sections i.e. Laws, Search, Resources and Help. i.e. http://www.canlii.org/en/.

### 5.3 United States of America

The **official portal of United States Government** supports the public to get U.S. government information and services on the web. The web portal has four major parts viz. Get Services, Explore Topic, Find Government Agencies, Contact Government. The first part provides information regarding basic services like passport, personal records etc. The second part i.e. Explore Topics provides intensive information related to vast subject areas as shown in the figure.

The third and most important part i.e. “Find Government Agencies” are explored for law and legal related information. It facilitates A-Z details of all government agencies and departments of United States. It connects to the sub portals of various branches of government like Executive branch, Judicial Branch and Legislative Branch. A Researcher can also access **US Supreme Court Judgments** Bound Volumes according to number through http://www.supremecourtus.gov/opinions/boundvolumes.html.

The **United States Code** is the codification by subject matter of the general and permanent laws of the United States based on what is printed in the Statutes at Large. It is divided by broad subjects into 50 titles and published by the Office of the Law Revision Counsel of the U.S. House of Representatives. GPO Access an official web portal @ http://www.gpoaccess.gov/uscode/ contains the 2006, 2000, and 1994 editions of the U.S. Code, plus annual supplements. The information contained in the U.S. Code on GPO Access has been provided to GPO by the Office of the Law Revision Counsel of the U.S. House of Representatives.

The **Constitution of the United States** comprises the primary law of the U.S. Federal Government. It also describes the three chief branches of the Federal Government and their jurisdictions. Files are available in ASCII text and Adobe Portable Document Format (PDF) through the offical web portal known as Government Printing Office Access which is offical portal of Government of United States. http://www.gpoaccess.gov/constitution.

**5.4 United Kingdom**

In October 2009, the **Supreme Court of United Kingdom** replaced the Appellate authority of the House of Lords as the highest court in the United Kingdom. The cases decided by Supreme Court are available full text at its portal i.e. http://www.supremecourt.gov.uk/index.html.

Before establishment of U.K. Supreme Court, **House of Lords** was the Appellate Court in United Kingdom. House of Lords Judgments since 1996 to 2009 in HTML format as well as printable format i.e. pdf are readily available for reference to general public on the web portal of House of Lords i.e. http://www.publications.parliament.uk/pa/ld/ldjudgmt.htm. Access to judgments prior to 1996 can be browsed through the Parliamentary Archives. The Archives holds appeal cases and other records of the House of Lords acting in its judicial capacity, dating from 1621.

The web portal of **Legislative Branch** @ www.legislative.gov.uk is managed by The National Archives on behalf of HMSO Government. Publishing all UK legislation is a core part of the remit of **Her Majesty's Stationery Office** (HMSO), part of The National Archives, and the Office of the Queen's Printer for Scotland. The Office of the Queen's Printer for Scotland (OQPS) provides access to Acts of the Scottish Parliament, Scottish statutory instruments and a range of other legislation applying to Scotland.

The **Law Commission** is the statutory independent body created by the Law Commissions Act 1965 to keep the law under review and to recommend reform where it is needed. The Commission publishes a law reform report at the conclusion of each project, usually include a draft Bill that, if implemented, would enact recommended reforms. Researchers can browse law reform reports, statute law reports, programmes of law reform, scoping discussion and subject papers, corporate and other miscellaneous documents.

**6. Law Journals and Scholarships under Public Domain**

**Social Science Research Network** (SSRN) http://www.ssrn.com/ is devoted to the rapid worldwide dissemination of social science research and is composed of a number of specialized research networks in each of the social sciences. SSRN have hundreds of journals, publishers, and institutions in partners in publishing that provide working papers for distribution through SSRN's eLibrary and abstracts for publication in SSRN's electronic journals. The SSRN eLibrary consists of two parts: an Abstract Database and an Electronic Paper Collection containing full text documents in Adobe Acrobat pdf format.

| Sl. No. | Subject | Number of paper submitted |
|---|---|---|
| | Accounting Research Networking | 17082 |
| | Cognitive Science | 5245 |
| | Economic Research | 243780 |
| | Corporate Governance | 13663 |
| | Entrepreneurship Research & Policy | 19403 |
| | Financial Economics | 92357 |
| | Health Economics | 5404 |
| | Legal Scholarship | 124462 |
| 41467 | Management Research | 41467 |
| | Political Science | 37872 |
| | Social Insurance Research | 5352 |
| | Humanities | 19196 |

**Table 1: Number of Papers submitted as on 20/01/2012.**

The **Global Legal Information Network** (GLIN) http://www.glin.gov/search.action is a public database of official texts of laws, regulations, judicial decisions, and other complementary legal sources contributed by governmental agencies and international organizations. The GLIN members contribute the full texts of their published documents to the database in their original languages. Each document is accompanied by a summary in English and, in many cases in additional languages, plus subject terms selected from the multilingual index to GLIN.

Launched on January 9, 1996, **FindLaw.com** http://www.findlaw.com/casecode/supreme.html soon offered a mix of cases,

statutes, legal news, a lawyer directory, an online career center and community-oriented tools such as mailing lists and message boards. The Web site rapidly developed into the leading legal information site on the Internet.

DOAJ is a directory of open access journals. At the First Nordic Conference on Scholarly Communication in Lund/Copenhagen in 2002, the idea of creating a comprehensive directory of Open Access Journals was discussed. The conference with the objective to facilitate a valuable service for the global research and education community was formulaized. Open Society Institute (OSI) supported the initial project work and at present more than 110 countries is supporting the movement permitting their online journal contents accessible through this database. It contains around 135 journals of legal sphere.

**7. Free Access to Law Movement in India**

Various government and non-governmental agencies are involved in for free access to legal and law related information in India. The pioneering efforts were made by National Informatics Centre (NIC) (http://www.nic.in/) during launching various sites providing online legal information like JUDIS, INDIACODE, Law Commission of India, ministerial websites and various high courts. In pursuance various independent private initiatives are taken like **Legal Services India, Indian Kanoon,** and **PRS Legislative Search**. The Government agencies and departments have established its web portals at national and state level to provide digitized legal information for public awareness and free distribution of law and law related information to the public.

**7.1 Government Initiatives**

All government ministries are maintaining their websites through National Informatics Centre, which provide rules, regulations and legislation past regarding functions of their works. E governance has been adopted by a number of states to facilitate their local laws including judgments, state legislative debates, state legislations and other committees and commissions reports. If anyone wants to refer any law related to any particular ministry, a simple mouse click may provide the complete full text gazette notified scanned copy or html format of the same within no time. The web portal of Parliament of India has three subsections i.e. President of India, Lokh Sabha and Rajya Sabha. Government of India has adopted a complete e-governance agenda since 1990s. The official portal of Government of India i.e. www.india.gov.in provides almost all information including legal information like Constitution of India, Acts & Legislations, Law & Orders, Parliament of India, Rules etc. The other official websites of India, a Government of India Directory www.goidirectory.gov.in provides an index of central government and its departments, state legislators and state departments, judiciary i.e. Supreme Court of India and High Courts established in the states.

### 7.1.1 Parliamentary Procedures and Debates

The website of the Parliament www.parliamentofindia.nic.in of India provides all activities and procedures of the both houses of the parliament along with President of India official records. The website has three sub sections i.e. www.presidentofindia.nic.in , www.rajyasabha.nic.in and www.loksabha.nic.in . The website of Rajya Sabha provides business hour information, question hour and debates in the Rajya Sabha along with committees reports etc. The website of Lok Sabha also provides business, question, debates, legislations, committees, conference and secretariat level information.

### 7.1.2 Legislations

The Indian parliament legislations are available at a number of government portals like www.parlamentofindia.nic.in and www.indiacode.nic.in . India Code maintained by National Information Centre provides information about all legislations passed by the Indian parliament along with non repealed act of British Parliament established for India since 1836. The Centre for Policy Research initiated a most valuable web portal project entitled Parliament Research Studies India i.e. PRS India with financial support from the Ford Foundation and the Google Foundation in 2005. The web portal under the address www.prsindia.org facilitates legislative bills with its summary, debates on other issues of national importance and reports of commissions and committees over any bill introduced in either or both sessions of the Parliament of India.

### 7.1.3 Cases Decided in Courts

The other part of law is cases decided in the courts known as case law. Further National Informatics Centre (NIC) on behalf of the Government of India maintains a website called Judgement Information System JUDIS i.e. www.judis.nic.in which provides all judgments of Supreme Court of India since inception in full text, along with judgments of various High Courts and other subordinate courts of the states. Tribunals and regulatory authorities' cases are also available at this web portal. The other website www.indiancourts.nic.in also provides an index to Indian courts along with cases of the respective courts at subordinate level and tribunals.

### 7.1.4 Commission & Committee Reports:

Other ingredient of Indian law is Commissions & Committee reports of government of India. Indian Government provides almost all commission & Committees report on respective websites. National Human Rights Commission a permanent commission provides its reports and other legal documents through its website www.nhrc.nic.in . The other State Human Right Commission reports are also available at respective State Human Right Commission websites. Law Commission of India, another permanent commission, reports may be referred through its official website .i.e. www.lawcommissionofindia.nic.in since first

report in full text. Besides parliamentary committee reports are also available on parliament of India website. One time commission reports are also available on respective governmental department's web portals.

### 7.2 Legal Information Institute of India

**Legal Information Institute of India (LII of India)** has been recently launched in February 2011 by AUSTAD, an NGO associated with Cornell University, USA and Australian Legal Information Institute. LII of India provides almost all law related information of India through its portal www.liiofindia.org officially inaugurated on 1st May 2011 at Vigyan Bhawan by National Law University, Delhi. Till now, LIIofIndia contains more than 150 databases as compared to 50 databases at the time of its launch. The Home page contains news and database additions along with bifurcation of resources in five pillar of law i.e. Cases, Legislation, Journals and Scholarship, Law Reforms and Treaties. The Resources have been arranged by territories i.e. Central Government Resources and law resources of State governments.

The LII of India supports in dissemination cases decided by the Supreme Court of India since its inception. More than one lakh cases since 1950 have been digitized and available to search by various options like nominal search, chronological search, citation search etc. The following charts explain extent of cases coverage in the Supreme Court of India database.

| Year | Number of Cases | Year | Number of Cases |
|---|---|---|---|
| 1950 | 44 | 1981 | 210 |
| 1951 | 63 | 1982 | 103 |
| 1952 | 83 | 1983 | 207 |
| 1953 | 90 | 1984 | 241 |
| 1954 | 126 | 1985 | 259 |
| 1955 | 81 | 1986 | 286 |
| 1956 | 86 | 1987 | 386 |
| 1957 | 115 | 1988 | 371 |
| 1958 | 139 | 1989 | 396 |
| 1959 | 159 | 1990 | 403 |
| 1960 | 303 | 1991 | 314 |
| 1961 | 369 | 1992 | 238 |
| 1962 | 382 | 1993 | 534 |
| 1963 | 263 | 1994 | 700 |

| | | | |
|---|---|---|---|
| 1964 | 300 | 1995 | 856 |
| 1965 | 307 | 1996 | 1664 |
| 1966 | 271 | 1997 | 953 |
| 1967 | 304 | 1998 | 635 |
| 1968 | 324 | 1999 | 431 |
| 1969 | 343 | 2000 | 679 |
| 1970 | 258 | 2001 | 656 |
| 1971 | 351 | 2002 | 588 |
| 1972 | 312 | 2003 | 682 |
| 1973 | 258 | 2004 | 780 |
| 1974 | 282 | 2005 | 704 |
| 1975 | 355 | 2006 | 976 |
| 1976 | 338 | 2007 | 1312 |
| 1977 | 242 | 2008 | 2254 |
| 1978 | 264 | 2009 | 1846 |
| 1979 | 276 | 2010 | 1329 |
| 1980 | 239 | 2011 | 1214 |

**Table 2: Number of Supreme Court of India Cases covered in LII of India**

LII of India is extending its coverage towards judgements of High Courts of India. In its efforts, judgements of around 21 high courts, 9 district courts and 6 tribunals are in the process. Till date it has extended its coverage for cases decided in years according to following tables.

| High Courts | Years |
|---|---|
| Andhra Pradesh High Court | 11 |
| Chattishgarh High Court | 5 |
| Delhi High Court | 8 |
| Gujarat High Court | 2 |
| Jharkhand High Court | 2 |
| Allahabad High Court | 18 |

| | |
|---|---|
| Guhati High Court | 6 |
| Patna High Court | 2 |
| Bombay High Court at Goa | 8 |
| Himachal Pradesh High Court | 2 |
| Jammu & Kashmir High Court | 2 |
| Kerala High Court | 6 |
| Orissa High Court | 20 |
| Rajasthan High Court | 4 |
| Madras High Court | 6 |
| Uttrakhand High Court | 4 |
| Karnataka | 2 |
| Bombay | 4 |
| Calcutta | 12 |
| Madhya Pradesh | 2 |
| Punjab & Haryana | 9 |

**Table 3: Number of Years of Cases of High Courts covered in LII of India**

| Name of District Courts | Years |
|---|---|
| Kamrup District Court | 3 |
| District Court of Chandigarh | 2 |
| District Court of Delhi | 4 |
| District Court of Bhopal | 2 |
| District Court of Ranchi | 1 |
| District Court of Jodhpur | 2 |
| District Court of Allahabad | 2 |
| District Court of Nainital | 2 |

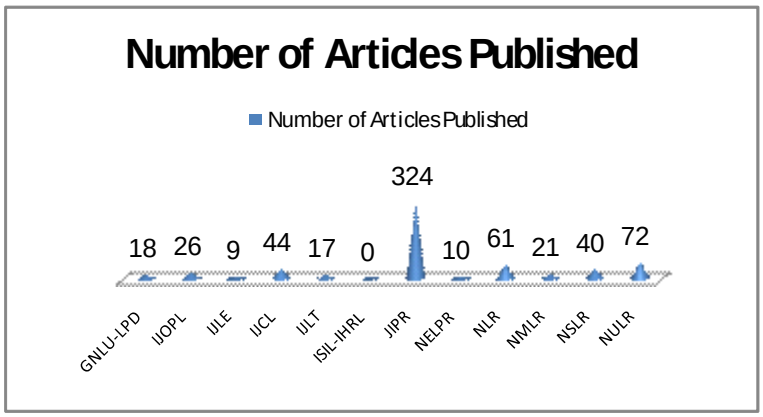
**Table 3: Number of Years of Cases of District Courts covered in LII of India**

The second pillar of LII India database is legislations. The database extends its jurisdiction to cover all central legislations since 1876 and selective state

legislations. Under the head of legislation, it provides regulations, schemes and acts of almost all states and central spheres.

The third and important pillar of the LII of India emphasizes over scholarly articles published in twelve journals from authoritative principal institutions as detailed below:

| Sl. No. | Journal Title | Abbreviation | Coverage | No. of Articles |
|---|---|---|---|---|
| 1 | GNLU Journal of Law, Politics and Development | GNLU-LPD | 2009 | 18 |
| 2 | Indian Journal of Intellectual Property Law | IJOPL | 2008 to 2010 | 26 |
| 3 | Indian Journal of Law and Economics | IJLE | 2010 | 9 |
| 4 | Indian Journal of Constitutional Law | IJCL | 2007 to 2010 | 44 |
| 5 | Indian Journal of Law and Technology | IJLT | 2005 to 2008 | 17 |
| 6 | ISIL Year Book of International Humanitarian and Refugee Law | ISIL-IHRL | NA* | NA* |
| 7 | Journal of Intellectual Property Rights | JIPR | 2002 to 2010 | 324 |
| 8 | NALSAR Environmental Law and Practice Review | NELPR | 2011 | 10 |
| 9 | NALSAR Law Review | NLR | 2003 to 2011 | 61 |
| 10 | NALSAR Media Law Review | NMLR | 2010 to 2011 | 21 |
| 11 | NALSAR Student Law Review | NSLR | 2005 to 2011 | 40 |
| 12 | NUJS Law Review | NULR | 2008 to 2009 | 72 |




Under the heading Law Reform as its fourth pillar, LII of India supports to access all Law Commission of India Reports published since 1999. The all reports since its inception will be available within a very short span. The fifth and the last pillar of LII of India contain Indian bilateral treaties based on data obtained from the Ministry of External Affairs. The database covers almost all treaties ratified with other countries since 1947 to 1980 and 2001 to 2009. The number of treaties covered is summed up in a graphical presentation as under.

**7.3 Conclusion**

The article discusses the free access to law by international and national organization including the country based legal information resources of Australia, Canada, USA, UK and India. There have been NGOs initiatives which have been explained. They are **LII of India, Indian Kanoon, Legal Services in India, Lawyers Collective, Legally India, India Together, Commonwealth Human Rights Initiatives** and **Vakil no.1**. It has discussed law journals and scholarships, the role of SSRN, Global Legal Information Network, Findlaw, and Legal Information Institutes.

Public domain e-resources are playing significant role. Its role is increasing day by day against the back drop of high cost of commercial databases. The Open Access Movement has to be vigorously taken by government and non-government agencies to keep up in view the limited budget of libraries. Moreover the message that knowledge is free for all or dissemination of information pushes the movement further. At present it is beginning, but after a decade or so, the movement of making legal information available free of cost to the users will catch up. The librarians will use public domain e-resources, and they should publicise public domain resources so that the use of these resources increase. The apex courts of different nations should also support them and cite their references considering them as standard legal resources. Thus in changing scenario of legal education in India, it will encourage such initiative of government or non-governmental agencies. Moreover it will be responsibility of academic law institutions to discourage costly commercial databases. Free Legal

information has to be percolated to the local level to that people know about how legal issues are dealt by various law institutions i.e. legislatures and judiciary.

**Endnotes**

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# (RE)CONSTITUTING THE ANCHORAGE FOR INTERNATIONAL LAW RESEARCH AT THE PEACE PALACE LIBRARY WITH SOCIAL MEDIA

**Jereon Vervilet***

In order to fully understand the phrasing "(re)constituting" it is necessary to address the early history and historical development of the Peace Palace Library culminating on the one hand typologically in the next generation of law libraries and legal information centers and on the other hand demonstrating the growing importance of free access of international law resources.

The Peace Palace Library has three main target groups. 1] international courts, 2] The Hague Academy of international Law, 3] the world at large.

The most important amongst the international courts to be served is the International Court of Justice (ICJ), one of the six Principal Organs of the United Nations.

The second court is the Permanent Court of Arbitration (PCA), the oldest, for which the Peace Palace Library has been the 'Standard Library of International Law (in Andrew Carnegie's words at the time the American-Scottish industrialist and philantropist donated the money to construct the Temple of Peace, afterwards named the Peace Palace Library).

Thirdly it is the group of international criminal courts (general or special, even domestic); the International Criminal Court (ICC, established with the 1998 Rome Statute), the International criminal Tribunal for the former Yugoslavia (ICTY), the Special Court for Sierra Leone (case against Charles Taylor), the Special Tribunal for Lebanon (trying the accused for the killing of Rafiq Hariri), the Dutch Supreme Court (in particular for comparative legal research), Dutch District Courts (in The Hague: International Criminal Law in Domestic Courts-Chamber; in Rotterdam: Law of the Sea, Maritime Law, Criminal Acts at Sea, Piracy-Chamber). The Hague Conference on Private International Law is also to be counted amidst the principal institutional endusers.

The second visible and tangible target group consists of the Hague Academy of International Law, a well-established summer school existing since 1923, for which the Peace Palace Library, as a sister-organization, deploys activities, e.g. a dedicated digital library, an e-learning facility; this secondary closed class of endusers is defined and known.

The third category is to be characterized as undefined endusers: professors, scholars, students This group, real and virtual, is geographically worldwide

* Jereon Vervilet, Peace Palace Library Director. Special thanks to Aad Janson, Patroeska Engel and Irene Chang for their help, advices and preparatory work.

distributed, but of increasing interest, due to globalization and due to The Hague as Legal Capital of the World. The chief inconvenience is that this cluster or body is not clearly outlined and difficult to recognize and even more complex to approach. The main challenge is how to get the shapeless community on board and to keep the real or virtual walk-in user on board.

For rendering services to all these categories the Peace Palace Library has been building collection on International Law, Comparative Law, and the international and diplomatic history of conflict areas for the sketch of the context in which controversies occur since 1913.

The so-called Printed Catalogue of the Peace Palace Library acted as the cornerstone for International Law documentation and activities worldwide, up to the Second World War. Thereafter the Peace Palace Library went through a recession, a depression and a downswing for several decades. Unmistakebly this development parallels the lesser importance of, or belief in, or compliance with International Law in the epoque of the polarity of East-West/Soviet-USA/Cold War.

Still, notwithstanding the doldrums and stagnation, from this legal and library history and scope and purpose description it is obvious though that the Peace Palace Library has ever been obliged to maintain, continue and follow a Just-In-Case policy, anticipating any future issue that may arise. Hence a sophisticated classification and keyword effort, aiming at fast and adequate retrieval.

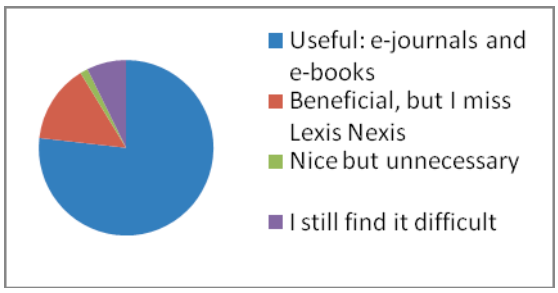
However, since the 1990s, the United Nations' Decade of International Law and The Hague becoming the Legal Capital of the World, the Peace Palace Library enjoys again an even growing importance. Materializing library automation therefore and establishing the digital library since 2000 were taken up professionally.

Now it is the time to find and offer vanguard services to new communities. Thus bringing ourselves once again to the fore as the inevitable and inescapable pillar containing International Law information, like in the days of the Printed Catalogue. Therefore the Peace Palace Library has embarked upon the creation of the same paradigm, albeit in modern surroundings, by offering a website for practioners and scholars that is almost mandatory and necessary for any proper International Law research.

How to promote the website, how to make the website found and how to re-establish the virtuosity of the website? Half-a-century after the abandonment of the pre-war Printed Catalogue a nowadays' anchorage is imminent. Through statistical evidence, harvested in questionnaires and surveys, the Peace Palace Library could discern the new directions and innovative techniques to embrace.

**How did the 2009 students and scholars appreciate the DIGITAL LIBRARY RESOURCES?**

**Public International Law Course 2009**

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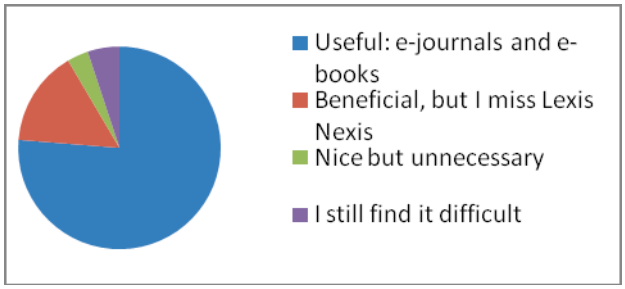
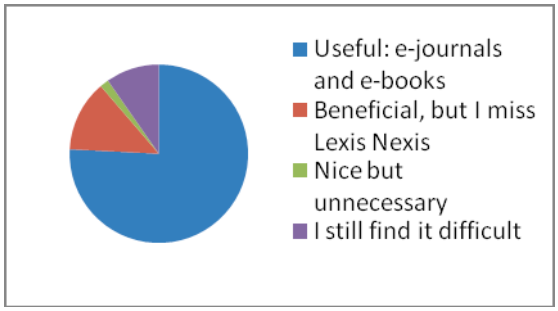



In 2009 more than 75% was satisfied, as in 2010.

**Public International Law Course 2010**

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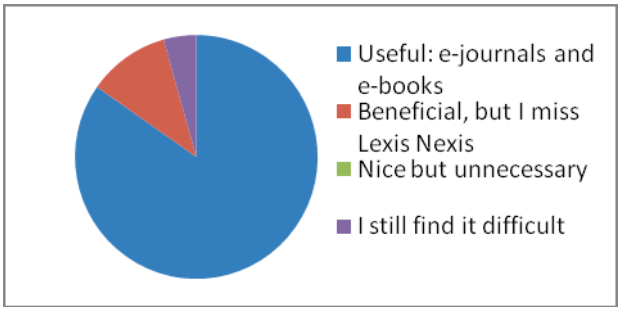
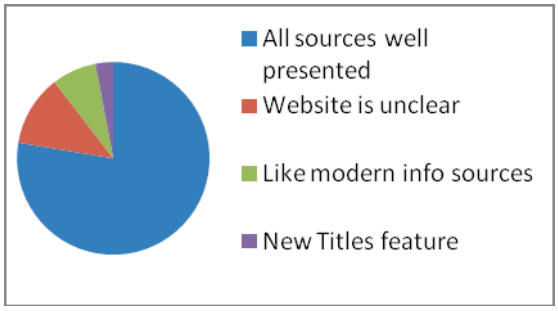


**How did the 2009 students and scholars appreciate our WEBSITE?**

**Public International Law Course 2009**

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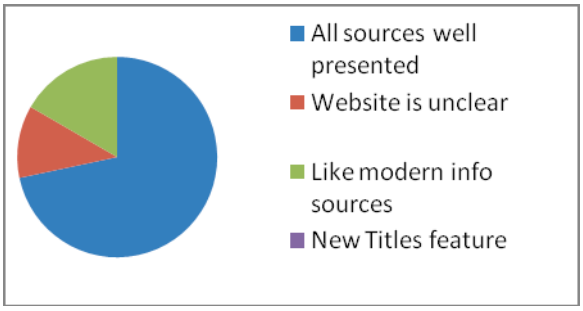
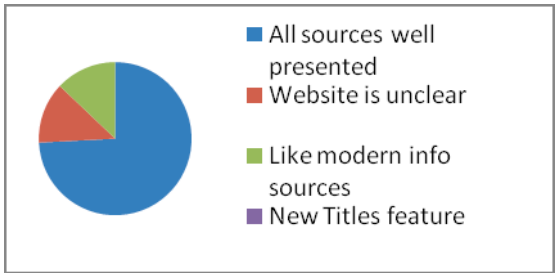



In 2009 more than 75% was satisfied, as in 2010?

**Public International Law Course 2010**

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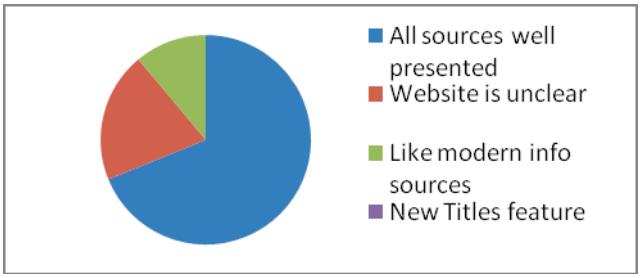
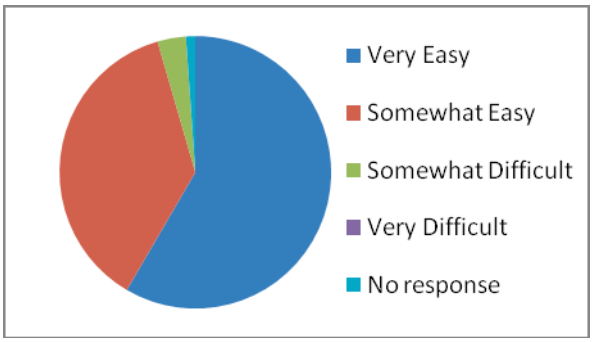


**But what happened in 2011 with respect to the WEBSITE NAVIGATION?**

**Public International Law Course 2011**

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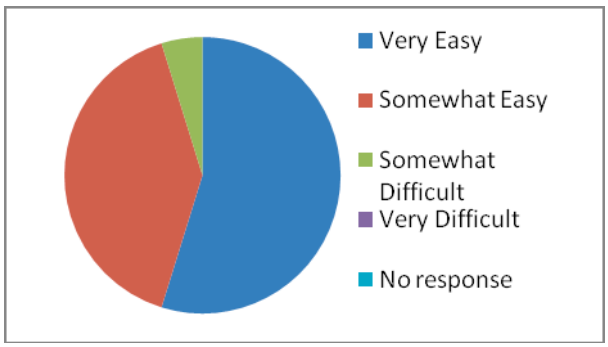
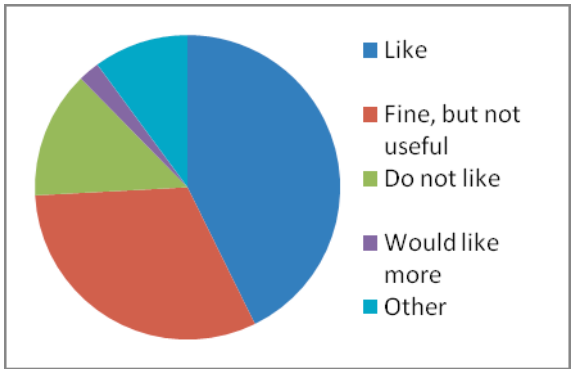



Clearly services were less appreciated. This was even more the case with the SOCIAL MEDIA as a library tool in 2011.

**Public International Law Course 2011**



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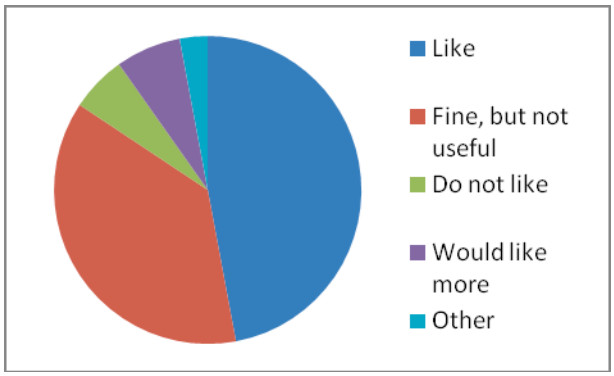


The solution to intervene was found in the adaption of the following operational approach in a new website:

— *Content optimization: employ the investment in classifications and subject headings applied since 1913, utilize the embodiment of knowledge in staff members, seek meaning and bring the quality and capacity of the collection into prominence*

— *Practical implementation: restructuring the website by using good keywords in titles and headings of chapters and paragraphs of the website, and by adding purposeful hyperlinks*

— *Frequent updates, renewal of significant matters, incessant upload of new content : blogs, international law news, new titles, library news*

— *Constant integration with social media: cross links (Facebook, Twitter, Delicious)*

— *Expand the Alert-Services (SDI), distribute a Newsletter containing pointers to website*

— *Choose another approach, turn your traditional way of presenting services 90 degrees: create TOPICAL RESEARCH GUIDES, prioritizing the content of the library, the ideas, the intellectual power, the subject matter sources immediately useful and applicable for legal practioners and scholars (instead of showing traditionally the available material in catalogues, bibliographies, databases, lists etc.)*

— *Do everything within the possible to not loose your website visitor.*

By doing so the Peace Palace Library architecturally 1] anticipates the endusers needs and 2] is geared toward Search Engine Indexing.

The successful result of the restructuring of the website of the Peace Palace Library is the increase of the third category of undefined endusers is growing. The newly constituted website has revitalized the international anchorage function of the Peace Palace Library.

| | **1-15 JAN 2011** | **1-15 JAN 2012** | **INCREASE** |
|---|---|---|---|
| VISITS | 4.416 | 11.303 | + 155% |
| UNIQUE VISITORS | 2.317 | 8.551 | + 270% |
| PAGE PRESENTATIONS | 8.169 | 23.455 | + 187% |
| PAGES PER VISITS | 1,85 | 2,08 | + 12% |
| % NEW VISITS | 35,33% | 74,92% | + 112% |


BLUE: 1-15 JAN 2012

ORANGE: 1-15 JAN 2011

# COMPUTER ASSISTED LEGAL RESEARCH WITH SPECIAL REFERENCE TO INDIAN LEGAL CONTENTS: RETROSPECT AND PROSPECT

**Dr. Rakesh Kumar Shrivastava, Megha Srivastava**
**B.B Khare and Geeta Pai***

**Legal research** is "the process of identifying and retrieving information necessary to support legal decision-making. In its broadest sense, legal research includes each step of a course of action that begins with an analysis of the facts of a problem and concludes with the application and communication of the results of the investigation."[1]

The processes of legal research vary according to the country and the legal system involved. However, legal research generally involves tasks such as: **(1) finding primary source of law**, or primary authority, in a given jurisdiction (cases, statutes, regulations, etc.); **(2) searching secondary authority** (for example, law reviews, legal dictionaries, legal treatise, and legal encyclopaedias such as American Jurisprudence and Corpus Juris Secundum), for background information about a legal topic; and **(3) searching non-legal sources** for investigative or supporting information.

**Legal research** is performed by anyone with a need for legal information, including lawyers, law librarians, and paralegals. Sources of legal information range from printed books, to free legal research websites (**open sources**) and information portals to fee database vendors.

## 1. Computer Assisted Legal Research: Historical Perspective

Information explosion resulted in exponential growth of published information almost in every academic field. The huge volume of published literature has created problems in the information handling for the Librarians and it is because of this reason Librarians were compelled to use computers for information handling. Use of computers for information handling resulted in many Information Technology Products, such as, "**Bibliographic**" and "**Textual**" databases on CD-ROM. **CD-ROM** technology has revolutionized the field of information handling and the huge databases on CD-ROM became available to the Libraries for subscription resulting in a boon to the user community. "**Internet**" has furthered the revolution in the field of information management and an era of "**On-Line Databases**" started with the increasing use of internet. Information retrieval through **computerized databases** resulted in speedy

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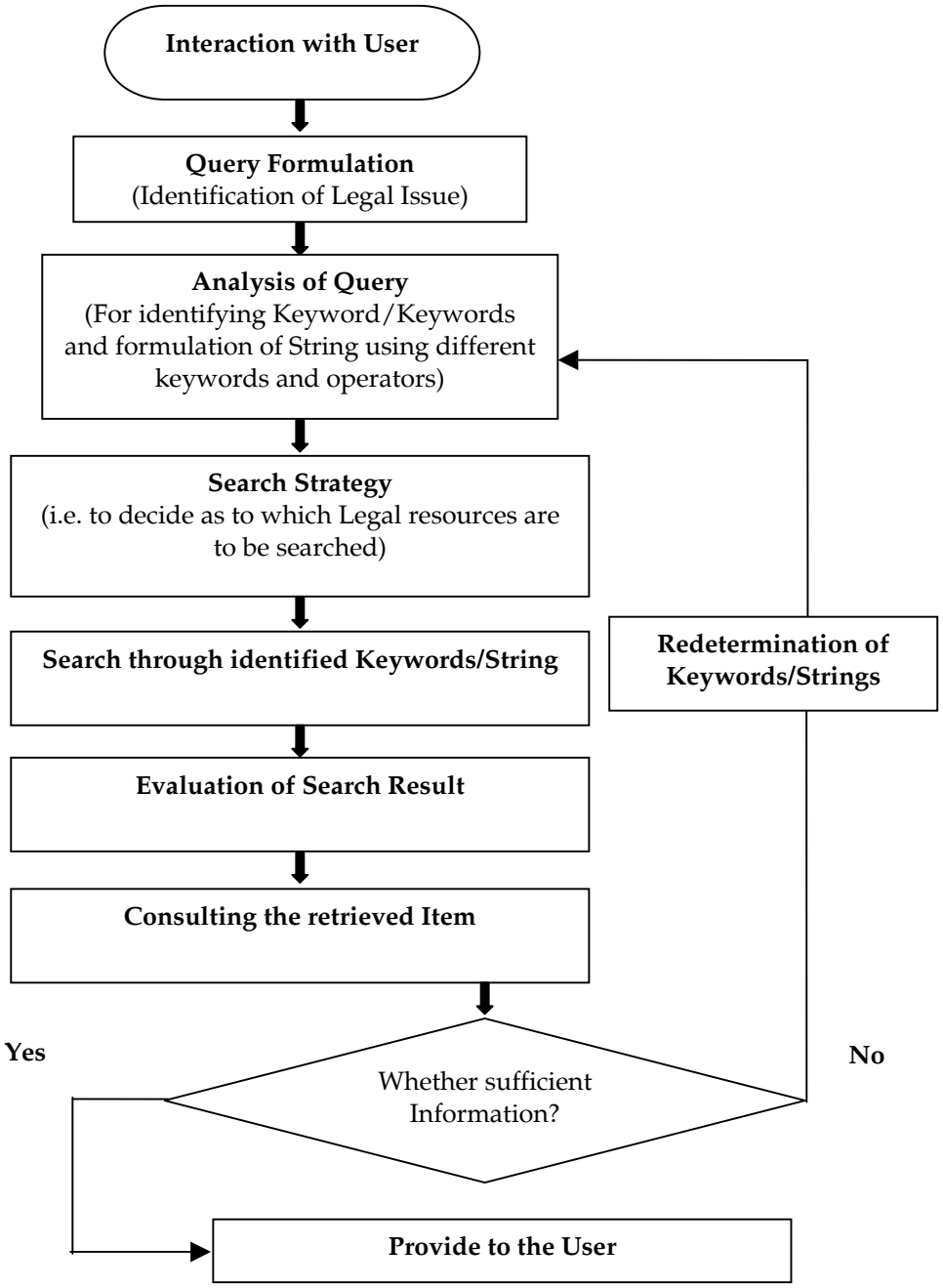
retrieval of information and made the research on specific topics much easier than that of manual research through the **printed resources**. But the basic research techniques through the conventional sources of information and the electronic sources of information remains the same.

**FLOW CHART: STEPS INVOLVED IN LEGAL RESEARCH**



Computer Assisted Legal Research started in the early 1960's. It is because of exponential growth in volume of published information. Computerized Information Management has become a necessity and efforts were being made by Library & Information Specialists for application of information technology to record, store, process & retrieve the information so that the relevant information may be retrieved for users. The Computer Assisted Legal Research is also one manifestation of information management technology.

**1.1 Efforts For Computer Assisted Legal Research Ins USA**

By the early 1960's, it was a general feeling among the lawyers in the USA that due to the geometric rate of increase in the amount of material, a lawyer has to do a comprehensive job of Legal Research and that Legal Research has become almost an intolerable burden. Legal community started thinking about feasibility using of huge, mysterious & temperamental machines known as computers for legal research by programming the same in some manner. Numerous committees were formed, seminars were held and panels were organised for finding out the ways & means for using Computer Assisted Legal Research.

Professor John Harty, has created an electronic library of the public health statutes of 50 states in the University of Pitsburg (USA).

Inspired by the success of this project, professor Harty's team began to put US Supreme Court Cases on tape and demonstrated that the Computer system could also cope with longer documents. Presently one may rate the work of Harty as primitive by today's standard but there is no doubt that it was the beginning of Computer Assisted Legal Research and for that, Prof. John Harty and his group deserve major credit.

The success of Harty and his team given impetus to many other organizations and group for exploring the ways and means of developing a more effective and efficient system for computer assisted research in the filed of law. "Ohio State Bar Association has taken the initiative for the same in the year 1965-66 and at the first instance this group has formulated a set of definitions. The definition formulated by the Ohio group was the most important achievement of the Ohio project which is yet the basic definitions used by LEXIS and Westlaw, the world's most comprehensive legal databases to this day. In the year 1967 Ohio group joined hands with the Data Corporation and the joint group worked towards the development of a legal research system which resulted in the creation of **OBAR (Ohio Bar Automated Research)**. This system was created by modifying the data corporation software to make it suitable. To begin with, it was capable of Boolean searches but only on AND, OR and NOT basis; there was no proximity connector. OBAR regarded proximity searching as essential.

"During the year 1967-70, while OBAR was being developed and tested, visitors from all over the United Sates and from many foreign countries travelled to Ohio to see it. Prominent among these were two men who subsequently would play important roles in making **LEXIS** a nationwide service – Thomas Plowden –

Wardlaw of New York and Judge David Dixon of Missouri. Both of them became enthusiasts for computer assisted legal research and return to their State Bar Association with optimistic reports. Many other visitors came, including delegations from France, Belgium, Germany and Scandinavia."

The work done by the OBAR has given the basis to many other organizations, which has resulted in the development of two most comprehensive computer assisted legal research databases in the world namely the "**LEXIS-NEXIS**" and the "**Westlaw**".

**1.2 Efforts in India**

As early in the year 1988, "the Law commission of India felt the necessity of computerization in Library & Information Centres in the Courts due to the explosion of legal literature and recommended that "Computerization of Library is a high priority necessity. The Court's time is wasted in collecting judgments bearing on the same subject. A push button system should be available to make handy all judgments on the subjects."

Chief Justice's conference held in 1991 took a decision to request **National Informatics Centre(NIC)** to take up the project of computerization of Supreme Court and High Courts & inter connect them through NIC-NET. Since then **National Informatics Centre (NIC)** a nation wide satellite based computer communication Network, is looking after the computerization of various activities in the Supreme Court and the High Courts. The two information systems namely **COURTNIC** & **JUDIS** had been conceptualized by the NIC. COURTNIC is now renamed as "Case Status".

Taking clue from the development of JUDIS and COURTNIC, many commercial vendors also thought of developing the legal databases in India for facilitating Computer Assisted Legal Research in the country. Many legal databases having coverage of Indian legal contents thus came into existence such as SCC Online, Manupatra, AIR Infotech, Indlaw, Grand Judis etc. In addition to these databases some legal databases confining itself to the specialized legal field also came into existence such as ITR, Excus, Tax India Online, Taxmann etc. Thus an era of Computer Assisted Legal Research in the country began.

Right to Information Act, 2005 enacted by the Parliament has also brought out a silent revolution in Computer Assisted Legal Research as Sec 4 of the Act makes it mandatory for every Governmental Authority to make available the information produced in the respective Governmental Department on their website for the access and use of the general public. This has resulted in availability of **Acts, Statutes, Bills, Rules , Regulations, Bylaws, Statutory Notifications, Consultation Papers, Committee & Commission Reports**, various orders of the different Governmental Departments and Parliament Debates on the Governmental website of the different departments, which otherwise was difficult to procure. This has also facilitated the Computer Assisted Legal Research because such documents are frequently needed by the legal fraternity.

**2. Computerised Legal Research**

Legal reference materials are both well-organized and highly interconnected. Computerized data bases and research techniques are available to help researchers in finding primary and secondary legal authorities. Computerized legal research does not replace traditional research, although it can supplement manual techniques. Computerized legal research is conducted much differently from manual research, and patrons generally must undergo special training.

Computerized legal research can have several advantages over manual research. One advantage is time efficiency i.e. a great deal of material can be examined in a relatively short time. A second advantage is the rapid availability of documents. For example, the full text of Supreme Court decisions is available within 24 hours of a decision on website, whereas days often pass before printed copies can be acquired. Finally computerized data bases offer greater accessibility than traditional reference materials because they use many different ways to identify information- such as judges' names, the dates of case decisions, and the use of key words and phrases – that may not be available in other legal indexes.

**2.1 Information Retrieval Through Computerized Databases**

Information retrieval involves many steps such as **Query Formulation, Query Analysis, Formulation of Search Strategy and Search through the database.** After interaction with the user, query should be formulated for effective information retrieval. Sometimes users are not very specific about their information requirements then a librarian has to enter into a dialogue with the user to understand his/her information requirements accurately. This phenomenon is known as "**Query formulation**".

The second step for effective information retrieval is analysis of the query. In analysis of the query, most appropriate search term is to be identified through which search is to be carried out. It is important that the "**search term"** so selected should match with the term used in database to ensure relevancy and accuracy.

For Example:

> A query came for finding out the case law in which the apex court directed that garbage should not be dumped near religious institutions. Search terms **"Religious institutions**" near **"Garbage**" was given which yielded only **one result** but that too was not relevant to the query. Then another search term **"Temple**" near **"Garbage**" was given and in this case also search result was only one case law **but it was very specific and to the point**.

Thus it is very much necessary that more appropriate term should be used as search term. If the database is using any particular "**thesaurus**", search term used in that thesaurus should be used to ensure relevancy, pertinency and accuracy.

**2.2 Need For Vocabulary Control**

**Vocabulary control** is one of the most important aspect in information retrieval. "**Homonyms**" in information retrieval create problems in effective retrieval. If a concept can be denoted by more than one term or phrase, one standard term should be opted as an "**Indexing Term**" or "**Descriptor**" so that all available information on that particular aspect may be retrieved otherwise the information will be scattered under different homonyms and different search results will occur.

For example "**Capital Punishment**", "**Death Penalty**" and "**Death Sentence**" are homonymous terms and when the search in the different databases by these terms were made, different search results have come. The search term "**Death Sentence**" yielded substantially higher number of cases than the "**Death Penalty"** and "**Capital Punishment"** as is evident from the table-1:-

**TABLE 1**

| Search Terms | SCC Online | Manupatra | Westlaw India | Lexis India |
|---|---|---|---|---|
| Capital Punishment | 132 Cases | 140 Cases | 132 Cases | 134 Cases |
| Death Penalty | 267 Cases | 293 Cases | 389 Cases | 264 Cases |
| Death Sentence | 643 cases | 652 Cases | 615 Cases | 563 Cases |

Thus when the search term "**Death Penalty"** or "**Capital Punishment"** will be given, it will not yield all the cases relating to that aspect.

Similarly table-2 also reveal that the search through the term "**Preventive Detention"** yields much higher number of cases than the search result of Homonymous terms "**Public Safety**" and "**Detention Laws**".

**TABLE 2**

| Search Terms | SCC Online | Manupatra | Westlaw India | Lexis India |
|---|---|---|---|---|
| Public Safety | 220 Cases | 223 Cases | 226 Cases | 230 Cases |
| Detention Law | 61 Cases | 50 Cases | 83 Cases | 47 Cases |
| Preventive Detention | 832 cases | 543 Cases | 539 Cases | 521 Cases |

It is therefore, important in a indexing database to use a "**Thesaurus**" for vocabulary control which will ensure **consistency** and **uniformity** in indexing as well as maximum search results. It is because of this reason all major indexing and abstracting services in the field of science and technology at International level use some thesaurus. Unfortunately no legal thesaurus is being used by any of the legal databases.

It is, therefore, suggested that legal data bases must develop their own "**thesaurus**" in which the most appropriate word among the homonyms should be denoted as "**Descriptor"** and there must be provision in the software of the data base that whenever any user gives any search term, if that search term is not "descriptor", cross-reference of the descriptor of that term used in the data base should appear on the screen so that user may use that "descriptor" to retrieve all the relevant information available in the database. **For example: For "Detention Laws" search *under* "Preventive Detention".** Alternatively (till such a thesaurus is not prepared and used), provision by data bases should be made for a separate search results from the "**Head-notes"** and "**judgment**" because search results of the "Head-notes" are mostly "precise" and "relevant". SCC Online provides this facility which may be followed by the other legal bases also.

**2.3 Evaluation of Major Legal Databases in India**

Presently there are four important legal databases in the country, namely, **SCC Online, Manupatra, West Law India, Lexis India**. All these databases are being used frequently by the legal fraternity in the country. They differ in format and coverage. An attempt is being made in this study to evaluate the performance of these legal databases. Evaluation of **Information Retrieval System** essentially means measuring the performance of the system, success or failure, in terms of its retrieval efficiency i.e ease of approach, speed and accuracy. The very purpose of evaluation is to judge the efficiency of a system in relation to retrieval, identifying the short-comings, if any, rectify them and improve upon the system. This study is aimed at comparing the performance of these legal databases and to show their level of performance.

**2.4 Criteria for Evaluation of IRS**

Different authorities have given a different criteria for evaluation of any information retrieval system. **Perry and Kent**[2] in 1950 brought out the concept of evaluation of Information Retrieval system (IRS) on the basis of following criteria:

(i) ***Resolution factor***: The proportion of total items retrieved over a total number of items in the collection.

(ii) ***Pertinency factor***: The proportion of relevant items retrieved over a total number of retrieved items. This factor is popularly named as the *precision ratio* in the subsequent evaluation studies.

(iii) ***Recall factor***: The proportion of relevant items retrieved over a total number of relevant items in the collection.

(iv) ***Elimination factor***: The proportion of non-retrieved items (both relevant and non-relevant) over the total items in the collection.

(v) ***Noise factor***: The proportion of retrieved items which are not relevant. This factor is considered as the complement of the *pertinency factor*.

(vi) ***Omission factor***: The proportion of non-relevant items retrieved over the total number of non-retrieved items in the collection.

**C.W. Cleverdon**[3] identified six criteria for the evaluation of information retrieval system as under:

(i) ***Recall***: It refers to the ability of the system to retrieve all the relevant items.

(ii) ***Precision*****:** It refers to the ability of the system to retrieve only those items that are relevant;

(iii) ***Time Lag*****:** It refers to the time gap between the submission of a request by the user and his receipt of the search results.

(iv) ***User Effort*****:** It refers to the intellectual as well as physical effort required from the user in obtaining answers to the search requests. The effort is measured by the amount of time user spends in conducting the search or negotiating his enquiry with the system. Sometimes, response time may be good, but user effort may be poor.

(v) ***Form of presentation*** of the search output, which affects the user's ability to make use of the retrieved items, and

(vi) ***Coverage of the collection*****:** It refers to the extent to which the system includes relevant matter. It is a measure of the completeness of the collection.

**Vickery**[4] identified two sets consisting of 3 criteria each, as follows:

**Set 1**

(i) ***Coverage*****:** the proportion of the total potentially useful literature that has been analyzed;

(ii) ***Recall*****:** the proportion of such references that are retrieved in a search, and

(iii) ***Response time*****:** the average time needed to obtain a response from the system.

These three criteria are related to the availability of information, while the following three are related to the selectivity of output:

**Set 2**

(i) ***Precision*****:** the ability of the system to screen out irrelevant references,

(ii) ***Usability*****:** the value of the references retrieved, in terms of such factors as their reliability, comprehensibility, currency, etc., and

(iii) ***Presentation*****:** the form in which search results are presented to the user.

In this study, evaluation of four major legal databases in India – **SCC Online**, **Manupatra**, **Westlaw India** and **Lexis India** have been done on parameters of "**Contents & Coverage**", **Recall** and **Relevance** and **uptodateness**.

**2.5 Check Points for Selection Of Database**

Many factors are to be considered at the time of making selection of a legal database for subscription. Some of the points which should be kept in mind at the time of selection of a legal database are as under :

- Cost
    - Ascertaining authenticity of the Contents.
    - Whether vender is using any Source journal?
    - Whether Data Auditing is being done by the Vendor?
    - Whether the Judgments reported by the Database have some Editorial Notes.
    - Whether list of Cases – dissented, followed, relied upon etc are given in the judgements.
    - Recall and Relevance.
    - Quality of the Headnotes.
    - Up -to -dateness of the Contents.
    - Cross Referencing.
    - Whether Hyperlinks are given or not?
    - Whether mechanism for Data protection is available so that Contents cannot be altered?
    - Highlighting of search term, i.e., whether such term is highlighted in the body of Judgment.
    - Provisions for advance search.
- Whether search options by Case No. , Date of Judgment and Judge Name are available?
    - Whether Copyright Issues have been taken care of?

**2.6 Contents and Coverage**

Contents and coverage of legal database play a very important role in its success or failure. A legal database must have coverage of:- Supreme Court decisions, High Court decisions, decision of Tribunals, Central and State legislations, Statutory Rules and Notifications, Legal Articles published in the Journals. In addition to this a legal data base may have as "value addition" decisions of the Federal Court, Privy Council and other Courts such as Burma,

Rangoon, Lahore etc., Commission and Committee Reports, Parliamentary Bills, Constitutional Assembly Debates, Parliamentary Debates etc.

**TABLE 3: CONTENT COVERAGE OF MAJOR LEGAL DATA BASES**

| Sl. No. | Coverage/ Features | SCC Online | Manupatra | Westlaw India | Lexis India |
|---|---|---|---|---|---|
| 1. | Supreme Court of India | 1950 till date | 1950 till date | 1950 till date | 1950 till date |
| 2. | High Courts | 21 High Courts (Not covering complete data) | 21 High Courts | 20 High Courts | 5 High Courts |
| 3. | Tribunals | 4 Tribunals (Not covering complete data) | 24 Tribunals along with decision of its benches if any. | 14 Tribunals along with decision of its benches if any. | No coverage |
| 4. | Other Courts | 1 Privy Council | 8 including Privy Council and Federal Court | 1 Federal Court | No coverage |
| 5. | Legislation | Central Acts Only (Not covering complete data) | Central Acts State Acts (Not covering complete data) | Central Acts State Acts of 11 states. (Not covering complete data) | No coverage |
| 6. | Corporate Law & Taxation | No separate option for search | Covered. Separate option for search | No separate option for search | No coverage |
| 7. | Notifications & Circulars | No coverage | Central & States Notifications | Covered | No coverage |

| | | | | | |
|---|---|---|---|---|---|
| 8. | Ordinance, Pending Bills, Committee Reports, Drafts, Stamp duty | Covers only constituent assembly debates, Reports of Law Commission | Having coverage of Ordinance, Pending Bills, Committee Reports, Drafts, Stamp duty | Covers some ordinances | No coverage |
| 9. | Forms | No coverage | Covered.<br>Separate option for search. | No coverage | Covered. Linked with E-books. |
| 10. | E-books | No coverage | 7 E-books | No coverage | 34 E-books retrievable |
| 11. | Articles | Covers articles published in SCC, Practical Lawyer | Covers articles on selective topics | No coverage | Few articles published in MLJ only |

**Table-3** reflects the coverage of different items by these databases. This table shows that Supreme Court Judgments from 1950 till date are covered by all the databases but only **Manupatra** and **West Law India** have comprehensively covered the judgments of High Courts by covering **21** and **20** High Courts respectively. In SCC Online, though all 21 High Courts have been covered but as per its online version the judgments from 2009 onwards only have been covered in case of most of the High Courts. **Lexis India** covered only **5** High Courts.

This Table also depicts that decision of the Tribunals are very comprehensively covered by the Manupatra as it is providing the judgments of 24 Tribunals along with the decision of all the Benches of the Tribunals followed by West Law, which is covering 14 Tribunals. SCC Online is covering only 4 Tribunals and only latest decisions of the Tribunals are provided. Lexis Nexis has no coverage of decisions of the Tribunal.

So far as the decisions of Courts other than the Supreme Court, High Courts and the Tribunals are concerned, **Manupatra** has been found to be more comprehensive in coverage as it is covering decision of 8 other Courts namely: **Federal Court, Lahore, Nagpur, Oudh, Peshawar, Privy Council, Rangoon, Sindh,** whereas, West Law is covering only the decision of **Federal Court** and SCC Online is covering the decision of **Privy Council**. **Lexis India do not cover decisions of any other court.**

On examining the coverage of legislations in the legal databases under study SCC Online and West Law were found to be covering only Central Acts whereas Manupatra provides text of both the Central Acts and the State Acts. Lexis India has no coverage of legislation.

**Notifications and Circulars** of **both the Central and State Govt.** have been covered both by **Manupatra** and **Westlaw**. But the Coverage of the same is **partial**. It appears that whatever notifications and circulars that can database vendor could lay hand, those notifications and circulars has been made available on the database. On the other hand SCC Online and Lexis India have no coverage of the same.

Manupatra also provides information relating to the ordinances, bills etc. where as no other database provides such information. West Law covers only few ordinances.

A very useful link providing access to statutory "**forms**" has been provided by the **Manupatra** which may be very helpful to the legal fraternity to download the form pre-prescribed in respective statutes. No such link/facility has been given by any other database. However, in **Lexis India** few forms could be downloaded which are available in the "**e-books**" provided by them.

**2.7 Recall and Precision**

The most important parameters used for evaluating the Indexing System are "**Recall and Precision".** The term "**Recall**" refers to a measure of whether or not a particular item is retrieved or the extent to which the retrieval of wanted items occur. "**Recall ratio**" is nothing but the proportion of relevant items retrieved.

The term "**Precision**" relates to the ability of an indexing system not to retrieve irrelevant items. "**Precision ratio**" is nothing but the proportion of retrieved items that are relevant. "**Recall**" and "**Precision**" in the databases under study is depicted by the following examples:

**Example 1:**

Search term "**dying declaration**" near "**conviction" 2005-2011** has been given to retrieve the cases in which accused has been convicted on the basis of dying declaration of the deceased.

**Search:** "Dying Declaration" Near "Conviction".

**TABLE 4**

| | **SCC Online** | **Manupatra** | **Westlaw India** | **Lexis India** |
|---|---|---|---|---|
| No. of Cases Retrieved | 84 | 60 | 64 | 61 |
| No. of Cases Relevant | 84 | 60 | 30 | 61 |

Table-4 shows that **SCC Online** and **Manupatra** retrieved **84** and **60** cases respectively and all the cases retrieved by these two data bases were found to be **relevant**, whereas, **Westlaw India** retrieved **64 cases** out of which only **30 cases** were found to be relevant. Thus, "**Recall**" in **SCC Online** is better than **Manupatra** and **Westlaw India** whereas "**Precision**" in both **SCC Online** and **Manupatra** has been found well up to the mark but the "**Precision**" is to be substantially improved in the Westlaw India. In case of **Lexis India** "Recall" is also very poor.

**Example 2:**

Another query was to find out the Supreme Court case law in which the word "**for**" has been interpreted by the Court. Search term "**proposition" near "for" 2005-2011** was given to limit the search between 2005-2011.

**Search:** "Proposition" Near "for" 2005-2011.

**TABLE 5**

| | **SCC Online** | **Manupatra** | **Westlaw India** | **Lexis India** |
|---|---|---|---|---|
| No. of Cases Retrieved | Nil | 2 | 26 | 3 |
| No. of Cases Relevant | -- | 2 | 2 | 2 |

As per table-5 no case law was retrieved by the **SCC Online**, in spite of the fact that two judgments on this point have been reported by their **source Journal** Supreme Court Cases (SCC). Manupatra has retrieved **2 cases**, whereas, **Westlaw India** retrieved **20 cases**. All the cases retrieved by the Manupatra were found to be relevant whereas only **2 out of 20 cases** retrieved by the Westlaw India were relevant. Thus, in this search "**Recall**" of SCC Online is **nil,** whereas **"Recall**" and **"Precision**" of **Manupatra** is to be highly appreciated being cent per cent, whereas, "**Precision**" of Westlaw India is only 10 per cent.

**Example 3:**

Search expression "**adverse remarks" near "expunction**" **High Court** was given. **SCC Online** and **Manupatra** retrieved **53** and **25 cases**, respectively and all of them were found to be relevant. West Law has retrieved 21 cases, all relevant. In this search, "**Recall**" in the case of **SCC Online is substantially higher** than that of **Manupatra** and **Westlaw India** but **"Precision**" of all the three data bases is well up to the mark being cent per cent.

**2.8 Up-To-Dateness of Legislation**

Keeping a Legislation **up-to-date** by incorporating the amendments brought out in a particular legislation is very important for legal data bases, because, if any particular amendment has not been incorporated in it and any judgment by any Court has been delivered by relying on the unamended Act, (on

the basis of legislation downloaded from the data base), then it will not be a good law. It is because of this reason up-to-dateness of databases with regard to Central legislation, has been examined in this Study. Twelve Central Acts of 2010 and 2011 have been randomly selected as sample and were examined. It is significant to note that **Westlaw India has incorporated amendments in all the 12 Central Acts**, whereas, **Manupatra has incorporated amendments in 9 out of 12 Central Acts**. On the contrary, **SCC Online (CD- Version) has not incorporated amendments** in any of the 12 Central Acts and its Web Version has incorporated amendments in only 8 Central Acts (Table-6). Thus, the **Westlaw India, is the most up to date legal data base with regard to Central Legislation.**

**TABLE 6: COVERAGE OF RECENT CENTRAL ACTS/AMENDMENTS IN SCC ONLINE, MANUPATRA, WESTLAW INDIA DATABASE**

| Sl. No. | Title of Central Act | SCC Online | | Manupatra | Westlaw India |
|---|---|---|---|---|---|
| | | CD | Web | | |
| 1. | Appropriation (Railways) Act, 2011 | ✗ | ✗ | ✗ | ✓ |
| 2. | State Bank of India (Subsidiary Banks) Amendment Act, 2011 | ✗ | ✓ | ✓ | ✓ |
| 3. | Finance Act, 2011 | ✗ | ✓ | ✓ | ✓ |
| 4. | Juvenile Justice (Care & Protection of Children) Amendment Act, 2011 | ✗ | ✓ | ✓ | ✓ |
| 5. | Transplantation of Human Organs (Amendment) Act, 2011 | ✗ | ✗ | ✗ | ✓ |
| 6. | National Council of Teacher Education (Amendment) Act, 2011 | ✗ | ✗ | ✗ | ✓ |
| 7. | Civil Defence (Amendment) Act, 2009 (3 of 2010) | ✗ | ✗ | ✓ | ✓ |
| 8. | Code of Criminal Procedure (Amendment) Act 2010 (41 of 2010) | ✗ | ✓ | ✓ | ✓ |
| 9. | Essential Commodities (Amendment) Act, 2010 (35 of 2010) | ✗ | ✓ | ✓ | ✓ |
| 10. | Industrial Dispute (Amendment) Act, 2010 (24 of 2010) | ✗ | ✓ | ✓ | ✓ |
| 11. | Land Ports Authority of India Act, 2010 (31 of 2010) | ✗ | ✓ | ✓ | ✓ |
| 12. | National Green Tribunal Act, 2010 (19 of 2010) | ✗ | ✓ | ✓ | ✓ |

**3. Conclusions**

Findings of this study reveal that:

I. There is no uniformity in **contents** and **coverage** in the databases evaluated in this study.

II. There is also no uniformity in '**format'** of the '**search results**'. Except **SCC Online** no database provides '**one liner subject'** indicator of the retrieved case.

III. There is **no comprehensive coverage of legal articles** published in law journals in any of the database. SCC Online covers only the articles published in their own journals viz. "Supreme Court Cases" and "Practical Lawyer".

IV. Inspite of the fact that "**State Legislations**" are most desired material to be made available on legal databases, **no database is providing comprehensive coverage to the State Legislations**. Manupatra and Westlaw India have covered legislations of some of the States but that is also partial.

V. Judgments of the **courts of pre-independence period (Federal Court, Lahore, Nagpur, Oudh, Peshawar, Privy Council, Rangoon, Sindh)** contain important legal information but except **Manupatra** no legal database under study has comprehensive coverage of judgments of the court.

VI. There is no provision in any of the database **to identify** either all **the Constitution bench decisions** of Supreme Court or Constitution bench decision on a particular subject or during a particular period.

VII. There is no provision of "**case number wise search**" in any of the database.

VIII. There is no provision in any of the database to retrieve the judgments "**Delivered by**" a particular judge.

IX. In Online legal databases, though the full text of the judgment is uploaded immediately after pronouncement of the judgment in the database but the "**Head-Notes"** and the "**citations"** are uploaded much after its publication in the Law Reports.

X. Some database vendors are replacing the references/ citations given in the text of the judgment by their own citations. It amounts to editing of the text of the judgment and such practice should be discouraged.

**4. Suggestions**

An Online Legal Database should be **authentic, up-to-date, accurate** and **reliable**, otherwise it will lose its relevance and usefulness. In order to make an

Online Legal Database sufficiently trustworthy, efforts should be made by the Database Vendors to make its contents **up-to-date** and **accurate** so that the Database may be treated as authentic and reliable. Though, "**Central Legislations**" are now being provided by most of the Legal Databases but amendments are not being incorporated by most of them promptly and in such cases the legislation without the amended provision becomes obsolete. It is, therefore, suggested that **amendments in the legislations should be promptly and accurately incorporated by the Database Vendors with proper referencing and citation of the amending act in the Govt. Gazette. If the amended act has been enforced, date of enforcement should also be indicated in the 'foot note'** and if the same has not been enforced even after the Presidential assent, there must be some indication in the text (where the amendment has been incorporated) that amending provisions have not yet been enforced.

**State Legislations** are very difficult to procure and Law Librarians and the legal fraternity find it extremely difficult to procure the State Legislations. It is because of this reason **"State Legislations**" are the most sought legal material and, hence, **Legal Database Vendors should attempt to provide full coverage to State Legislations in their Databases.**

Though, Online Legal Databases make available the judgments of the Courts immediately after its pronouncement but "**Head Notes"** and the "**Citations"** of the Journals in which they are published, are uploaded after much lapse of time. Some times, Head Notes are not proper and, hence, it becomes difficult for the user to determine the relevance of the case law retrieved. It is, therefore, suggested that **proper Head Notes prepared by the persons having expertise in preparing the Head Notes should be got prepared as expeditiously as is possible and uploaded in the Databases.**

"Provision for Case No. wise Search", provisions for retrieval of Constitution Bench decisions on a subject and provision for generating the list of judgments delivered by a particular Judge should also be made by the Database Vendor. Coverage of decisions of pre-independence Courts such as Federal Court, Lahour, Nagpur, Audh, Peshawar, Privy Council, Rangoon, and Sindh should also be done by the Legal Databases as decisions of these Courts contain very important decisions, especially on procedural law.

**5. Future Of Computer Assisted Legal Research**

With the increasing use of computerized research through the CD-ROM, Data Bases and the Internet, not only in the field of Law but also in all fields of knowledge, there has been much hue and cry about the future of the Libraries and Librarians. Authorities like Lancaster in his famous book namely the "**Paperless Society**" predicted as early as in 1970 that by the year 2000 there will be completely paperless society and again in **1991** he has predicted in a paper published in "Herald of Library Science", that by the year 2005 Libraries will be manned by the "**Robots"** and there will be no Librarians. There is no doubt that

**electronic Libraries will continue to expand and there will be more cheaper ways of using them but it is also true that print publication will not disappear. Electronic publication may be the principal way for the law profession to obtain information but the print publications are not going to lose their relevance**. So far as the future of Libraries and Librarians are concerned, it becomes more important with the increasing use of electronic resources.

"The function of a Librarian, after all, is not just to act as the custodian of an information warehouse; it is to make information useful, which of course means being able to call it out when it is needed. Already there are professionals who specialize in helping people to select the right electronic library and retrieve information from it. These specialists know what each library contains and how to use the various search protocols to retrieve it. With more and more information being created and stored, finding it and bringing it out becomes an increasingly important specialty. Rather than making librarians obsolete, the development of computer-assisted legal research makes librarians even more valuable."[5]

**Endnotes**

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# BIBLIOGRAPHICAL MANAGEMENT OF INDIAN ACADEMIC LAW JOURNALS

**Dr. S.D. Vyas***

**Abstract**

[Discusses the issues of legal education in the era of globalization. National law universities should bring out law journals and involve in research. Analyses Indian academic law journals geographically and institution wise. It proposes a bibliographical management of law journals through abstracting, indexing services as well as online databases like *LII of India*. Suggests national consortium of legal databases for national law universities as well as for other traditional law schools on the lines of UGC-INFONET and INDEST-AICTE]

## 1. Introduction

With the new scenario, emerging national law universities have become the prime universities of law in Asia. National law universities have geared up to raise the bar of legal education. In the past legal education was not satisfying as said by Dr. S. Radhakrishnan. "*Our college of law do not hold a place of high esteems either at home or abroad nor has law become an area of profound scholarship and enlightened research*". Prof. Ranbir Singh, former Vice-Chancellor of NALSAR University of Law and now present Vice-Chancellor of National Law University Delhi says "*Our nation requires a considerable lot to be done in terms of rejuvenating the legal mentality so as to tackle several contemporary issues* of *national and international importance."*(1) Prof. C. Raj Kumar, Vice- Chancellor of O.P. Jindal Global University says that legal education and its importance to establish a rule of law society did not receive any priority or attention in the traditional universities. He says that "*We should pay attention in four important factors to improve the standard of legal education .They are 1. Global curriculum.2. Global faculty. 3. Global degrees and 4. Global interactions." National Knowledge* Commission recommends reforms to make India a knowledge based economy and society. The Commission recognizes legal education as an important constituent of professional education. Mr. Pradeep Kumar Das says "*legal education makes man law-abiding and socially conscious. Legal education helps in bringing and establishing socio-economic justice." (2)*

We need quality legal education in the era of globalization because of the following reasons;

- Quality legal education can make accomplished judges and lawyers, and they are in fact social engineers.

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- Quality legal education with experience in moot court competition can make Indian advocates competent enough to argue in foreign courts. We need to have strong infrastructure as wells as holding moot court competitions in all Indian law schools on various issues of law.
- We need to address the issue of pending cases in courts. National law universities and other Indian law schools should suggest clearing of backlogs, and how speedier justice could be delivered to the people without much hassle of time and money.

A worthwhile legal research is possible if one knows what actually has already been researched on legal issues. National Knowledge Commission on legal education feels that there has not been meaningful research in the past. The Commission Report on legal education emphasizes to improve quality of M.Phil and Ph.D. courses and a paper on research methodology be made mandatory for research scholars. (3) In this respect the role of National Law School of India University and NALSAR University of Law is laudable. The two universities are publishing twelve academic legal journals and newsletters, and holding national and international conferences is commendable. This could be considered as quite substantial contribution to Indian legal education.

The present inventory of academic journals is based on journals received in NALSAR Library. The author has come across sixty four Indian academic law journals. Usually these journals go unnoticed except a few journals which are being indexed in ***Index to Indian Legal Periodicals***. There is demand to have an index for academic law journals as these cover high level researched articles. It is significant that such articles be covered by secondary sources. Indian legal scholarship has to be supported by indexes, bibliographies, abstracts and online databases. Such bibliographical tools should be brought out on regular basis so that scholars of law find it easier to search relevant research material through them. Online databases could be an answer.

During the last decade many law journals have been published by national law schools and traditional universities and colleges. The list of such journals is increasing every year. So far sixty four journals have been received in our library till date. These are not known to scholars of law. Indian academic law journals face the following troubles.

- Except few, the academic law journals have not been indexed in any Indian legal secondary sources.
- Academic law journals are not available commercially to other libraries through subscription as they are not priced publication.
- There is no guarantee whether its subsequent issues will be issued.
- There is no guarantee of issuance of the journals at regular intervals. Its frequency is generally not known.

- These are not covered by any digital media law databases in India except attempt made by LII of India recently.
- These journals have not applied for obtaining International Standard Serial Numbers (ISSN). ISSN being unique number identifies tittles among the number of international journals. It helps libraries world wide to identify titles quickly.

Prof. R.N. Sharma, a well known library scientist says *'regardless of publication medium, serials (periodicals) remain the key tool for scholarship and the primary source of current information and topical news in all fields of endeavor*. (4)

However, whatever may be the reasons, the law journals should be available to researchers and to the judicial fraternity. The articles published in these journals are peer reviewed. Hence they are worth referring for legal research. If secondary sources are not brought in law the articles in journals shall remain buried for ever violating amended third law of S.R. Ranganathan i.e." **every information its user"**.

The following national law universities have been contributing comprehensively on the subjects of law by publishing number of journals.

1. National Law School of India University, Bangalore(six journals)
2. NALSAR University of Law, Hyderabad (six journals)
3. University of Delhi ( three journals)
4. National Law University, Jodhpur (two journals)
5. Gujarat National Law University (two journals)
6. National University of Juridical Sciences, Kolkata (two journals)
7. National Law of India University, Bhopal (one journal)
8. Rajiv Gandhi National Law University, Patiala (one journal)
9. National University of Applied Legal Sciences. Kochi (one journal)

While analyzing the years in which the aforesaid journals were begun it gives us an interesting picture. Except a few journals like ***Journal of Indian Law Institute*** **(Delhi),** ***Punjab University Law Review*****, Journal of Legal Studies (Jaipur)** ***Delhi Law Review*****,** ***Indian Journal of Criminology and Criminalistics*****,** ***National Law School of India Review*** **(Bangalore),** ***Kashmir University Law Review*** **(Srinagar)** ***Andhra University Law Journal*** *and* ***Cochin University Law Review*** other academic journals have not completed even ten years of life. More than fifty percent of journals are being published after 2005. This has happened after national law universities and other traditional law schools/departments grew in large number.

The following is the geographical distribution of academic law journals published from the States which are brought out by the Indian law schools.

Andhra Pradesh (10) Chandigarh (1) Delhi (6) Goa (1) Gujarat (3) Haryana (3) Jammu and Kashmir (1) Jharkhand (2) Karnataka (6), Kerala (4) Madhya Pradesh (3) Maharastra (7) Punjab (4) Rajasthan (6) Uttar Pradesh(7) and West Bengal (5)

**Note:** The author has taken only those academic law journals which are received by NALSAR Library. There can be a few more journals which come out from other universities and colleges.

**2. *Index to Indian Legal Periodicals* (with select foreign articles). Indian Law Institute, New Delhi, Volume 46, 2008.**

The above index is only the secondary source pertaining to legal materials which indexes 200 Indian law journals. Its contents indicate that journals of political science, economics, and sociology are also covered. The index should make efforts to include academic law journals to enrich its content. A few academic law journals have completed more than five years. This will help the index to expand its database to 250 journals which will be useful to legal scholars to find the references about primary source material at one place. The index provides the list of periodicals indexed with their special feature on "Select Foreign Articles" which are arranged alphabetically under subject headings. (5)

**3. Legal Information Institute of India (Liiofindia.org)**

It is worthwhile beginning of electronic database pertaining to the field of law under open access category to view Indian legal databases freely. The database is open to public access prior to its launch in India in early 2011.***LII of India*** contains fifty databases which includes 300,000 decisions from thirty seven Courts and Tribunals, Indian national legislation from 1836, over 800 bilateral treaties, Law Reform Reports and about 500 law journal articles which have appeared in the following thirteen academic journals. The Law Cite citator tracks cases and journal article citations. The database will add case laws, the State and Territory legislations when it is launched formally.

***LII of India*** has been developed through cooperation of the following four leading Indian Law Schools (NALSAR University of Law, Hyderabad, National Law School of India University, Bangalore, National Law University, Delhi and Rajiv Gandhi School of Intellectual Property Law of Indian Institute of Technology, Kharagpur) in partnership with **AustLii**. The technical hub is at NALSAR in Hyderabad with initial development and ongoing support from **AustLii.**

Professor V.C. Vivekanandan of NALSAR University of Law is the Director of the said institute. The financial support has been provided by **AustLii** with additional support from Australian Research Council and Commonwealth Secretariat. It is a great breakthrough and first of its kind as an open access

database through which students, faculty and legal fraternity can access freely. The information is most authentic. It also paves way for research scholars to find out what has appeared in the Indian legal journals. It is just beginning and in times to come it becomes a very comprehensive law database. It will give big jolt to commercial databases which are monopolizing electronic law databases. This development justifies that dissemination of information and knowledge should be free to the people to enhance their knowledge. This database fulfills the gap and is step in right direction. Therefore it should be encouraged to have such databases. Under Journals and Scholarship, the ***LII of India*** covers the following Indian journals.

1. GNLU Journal of Law, Development of Politics
2. ISIL yearbook of International Humanitarian and Refugee Law
3. Indian Journal of Constitutional Law
4. Indian Journal of Property Law
5. Indian Journal of Intellectual Property Rights
6. Indian Journal of Law and Economics
7. Indian Journal of Law and Technology
8. NALSAR Environmental Law and Practice Review
9. NALSAR Law Review
10. NALSAR Media Law Review
11. NALSAR Student Law Review
12. NSL Yearbook of International Humanitarian and Refugee Law
13. NUJS Law Review

***LII of India*** will develop its journal database comprehensively within few years which will prove to be a boon for Indian legal and foreign scholars to know about Indian legal scholarship. (6)

**4. Networking and Resource Sharing**

There is hardly any resource sharing practiced in Indian academic law libraries. These law schools have been subscribing to Indian and International legal databases like ***Westlaw India, Hein Online, LexisNexis, JSTOR, Manupatra*** **and** ***SCC Online*** (web edition). NALSAR University of Law had called a meeting of Indian law schools librarians and librarians of High Courts in collaboration with law database providers in 2006 to discuss the concept of LAWNET, a consortium of sharing law journals to economize subscription rate of accessing law databases by the law universities. However its proceedings could not be followed later, but the need was realized of its urgent need. (6) Recently INFLIBNET/UGC has provided the access to ***Westlaw India, Manupatra*** and ***Hein Online***. Indian Law Schools should approach the Ministry Home and the

Ministry of Law, Government of India for various projects which will ensure financial health of the universities. (7)

**5. Conclusion**

It is estimated that in another decade there will be at least a dozen more national schools set up in different states. A few academic law universities will also emerge in private sector. The trend is visible as we find every year there is a new law university. A total number of national law schools may go up to fifty. Thus future of law universities is bright as they involve in legal research and teaching as well as engaged in specialized and interdisciplinary courses. Academic law universities should have their own legal consortium on the lines of INDEST-AICTE consortium so that each university can access legal databases freely. Moreover databases available in public domain should be enriched with Indian legal journals with full text facility. Also there is need of strong resource sharing among academic law librarians as well as a platform to discuss academic library issues of mutual concern. Let us do it together as it is high time to share our library resources as well as relevant information.

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**Appendix**

The following is a list of law journals which are received by NALSAR Library. There can be a few more journals which are published from national law institutions**.** The aforesaid study is based on the following journals.

1. *Aligarh Law Journal*. Aligarh Muslim University, Aligarh
2. *Amity Law Review*. Amity Law School, New Delhi
3. *Andhra Pradesh Law University Journal*. Visakhapatnam
4. *Army Institute of Law Journal*. Mohali
5. *BILS Law Review*. Bangalore Institute of Legal Studies, Bangalore
6. *Benaras Law Journal*. Benaras Hindu University, Varanasi
7. *Chotanagpur Law Journal*. Chotanagpuur Law College, Ranchi
8. *Cochin University Law Journal*.
9. *Dehradun Law Review*. Law College Dehradun, Dehradun
10. *Delhi Law Review*. University of Delhi, Delhi
11. *Dr. Ram Manohar Lohiya National Law University Journal*, Lucknow.
12. *Environmental Law and Practice Review.* NALSAR University of Law, Hyderabad.
13. *GNLU Journal of Law, Development and Politics*. Gandhinagar
14. *GNLU Law Review*. Gandhinagar
15. *Guwahati University Journal of Law*
16. *ILS Law Review*. ILS Law College, Pune
17. *IP Laws News*. NALSAR, Hyderabad
18. *Indian Journal of Constitutional Law,* NALSAR University of Law, Hyderabad
19. *Indian Journal of Criminology and Criminalistics*. LNJPN National Institute of Criminology and Forensic Sciences, Delhi.
20. *Indian Journal of Intellectual Property Law*. NALSAR University of Law, Hyderabad
21. *Indian Journal of International Economic Law*. NLSIU, Bangalore
22. *Indian Journal of Law and Justice*. North Bengal University, Darjeeling
23. *Indian Journal of Law and Technology*. NLSIU, Bangalore

24. *Indian Judicial Review*. NUJS, Kolkata
25. *Indian Law Review*. NLIU, Bhopal
26. *Jhunjhunu Journal of Legal Education*. Seth Motilal Law College, Jhunjhunu.
27. *Jindal Global Law Review.* Jindal Global Law School, Sonipat.
28. *Journal of Academy of Juridical Studies*. Tirupati
29. *Journal of Corporate Affairs and Corporate Crimes*. NALSAR University of Law, Hyderabad.
30. *Journal of Faculty of Juridical Sciences*. Mody Institute of Technology, Laksmangarh.
31. *Journal of Governance.* NLU, Jodhpur
32. *Journal of Indian Thought*. Mahatma Gandhi University, Kottayam
33. *Journal of Indian Law and Society*. NUJS, Kolkata
34. *Journal of Indian Law Institute*. Delhi.
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36. *Journal of Legal Studies.* University of Rajasthan, Jaipur.
37. *Journal of Minority Rights.* A.K.K. New Law College, Pune.
38. *Journal of Rajasthan State Judicial Academy*. Jodhpur.
39. *Journal of Symbiosis Law College*. Pune.
40. *Judicial Review*. NUJS, Kolkata.
41. *Kare Law Journal*. Govind Ramanth Kare College, Margao
42. *Kashmir University Law Review*. University of Kashmir, Srinagar
43. *Kerala University of Legal Studies*. Kerla University, Thiruvananthpuram.
44. *Law Quest*. Mumbai University, Mumbai
45. *Law Review*. Jai Narain Post Graduate College, Lucknow.
46. *Law Review*. Government Law College, Mumbai.
47. *Maharishi Dayanand University Law Journal*. Rohtak.
48. *March of the Law.* NLSIU, Bangalore.
49. *Media Law Review*. NALSAR University of Law, Hyderabad.
50. *Minorities Law Review*. Pune.
51. *NALSAR Law Review*, NALSAR University of Law, Hyderabad.
52. *NALSAR Student Law Review*, NALSAR University of Law Hyderabad
53. *NLIU Law Review*. Bhopal.

54. *NUALS Law Journal*. Kochi.
55. *National Capital Law Journal*. Delhi University, Delhi.
56. *National Law School Journal.* NLSIU, Bangalore.
57. *National Law School of India Review.* NLSIU, Bangalore.
58. *Punjab University Law Review*. Chandigarh.
59. *Punjabi University Law Journal*. Patiala.
60. *RGNUL Law Review*. Patiala.
61. *Scholasticus*. NLU, Jodhpur.
62. *Trade, Law and Development*. NLU, Jodhpur.
63. *Vidhigya: The Journal of Legal Awareness*. Integrated School of Law, Ghaziabad.
64. *Vidyasthali Law Journal*. Vidyasthali Law College, Jaipur.

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1. *CLT Newsletter*. NALSAR University of Law, Hyderabad.
2. *Centre for Advanced Study in International Humanitarian Law*. RGNUL, Patiala.
3. *Environment Law Newsletter*. NLSIU, Bangalore.
4. *Infosytem: IT and Law Initiative*. Symbiosis Society's Law College. Pune
5. *IPR Newsletter*. NLSIU, Bangalore.
6. *March of the IP Law*. NLSIU, Bangalore.
7. *NALSAR Aerospace Newsletter*. NALSAR University of Law Hyderabad.
8. NLSIU-ENVIS Centre Newsletter. Bangalore.

# CHANLLANGES OF INFORMATION TECHNOLOGY IN PROMOTING LEGAL EDUCATION AND RESEARCH: A CRITICAL ANALYSIS

**Dr. Jeet Singh Mann***

## 1. Introduction

The Supreme Court of India in *Sahu Rajeshwar Nath v. Income-tax Officer, C-Ward, Meerut and Anr.*[1] (1968), which is pertaining to the liability of a partnership for payment of taxes, has examined the nature and scope section, 18, 25 and 26 of the Indian Partnership Act, 1932. It is important to mention that the Supreme Court in this case has not discussed anything related to minor partner's liability. But when the said judgment was referred and cited by the Supreme Court in *Ashutosh v. State of Rajasthan and Ors.*[2] (2005), the name of the said case is incorrectly cited under the Para 11 by the latter decision, which reads as under:

In the case of *Sahu Rajeshwar Rao v. I.T.O.*, [1969] 72 ITR 617 (SC), this Court ruled that the liability of the partner of the firm is joint and several and it is open to a creditor of the firm to recover the debt of the firm from any one or more of the partners. In a decree against partnership firm, each partner is personally liable except the minor whose liability is limited to his assets in the partnership.[3]

It is pertinent to note that in the said decision of 1968 the Supreme Court did not deal with the issue of minor partner's liability and secondly the name of the said case is also incorrectly mentioned in the decision of the Supreme Court in 2005. This is not the isolated instance. The question arises as to how to conduct a quality research where the source of information is not authentic and not accurate and what would be the impact of such research work on legal education and legal research in India. We cannot ignore the significant contribution of the IT in legal education and research. But the quality of research has deteriorated by the inaccurate and unauthentic and latest information.

It is pertinent to note that the delivery of knowledge using ITs has influenced the design of various curricula programmes nationally and globally in launching of different educational programmes. Through the computer network, learners are able to communicate with the instructor on the material and could discuss assignments involved. In this process learners are able to attend lectures online. It has also been argued that IT was a way to move from elite to mass education through digital media where more learners could get access to education for both campus and distance-learning students.

It cannot be denied that the quality of legal education has improved considerably after implementation of Information technology, but the quality of

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research is deteriorating due to low quality of inputs and plagiarism. There are various limitations of information technology in promoting and advancing the legal education and research, such as the lack of awareness, lack of infrastructure facilities, lack of availability of reliable and authenticated data and the access to the various modes of information.

This research paper is an attempt to provide an insight into the impact of the technological age on the legal education and legal research. The main focus of the paper will be on the impact of emerging technologies on legal education and legal research. The author has suggested some remedial measures, to overcome the hindrances, in order to promote and develop legal education and legal research.

## 2. The Information Technology (IT) In Development Of Legal Education And Research

The information technology has been beneficial to Students who can get information at a click of mouse of a computer. Student have gigantic storage information from the internet services, therefore the information technology provides various benefits to students such as Increased access, flexibility of content and delivery, Combination of work and education, and higher quality of education and new ways of interaction. IT also enables a large number of students and researchers to have ready access to case law and other legal materials more efficiently than having them queue up for access to a limited number of books in the library. It also guides organisations in promoting and regulating the distance learning, online courses and other continuing education programmes.

### 2.1. Contribution Of The IT In Promotion Of Legal Education

Libraries have played important role in supporting legal education and doctrinal as well as non-doctrinal quality research. The last decade has brought about a sea change in relationships between users and libraries. Information technology enabled products and services, and the availability of online information resources have changed the way the services academic institutions and libraries now provide to their users. It has changed the traditional practices of library and information centres in delivery of services to the end users. Now users can have access to a variety of information and scholarly journals, bare acts, cases etc online. It also helps the users to access, manage, integrate, evaluate, create, and communicate information more easily than ever. Significant envelopments in IT have forever changed the way information is gathered, processed and disseminated. While processing, storage and retrieval facilities are provided by computers, telecommunication provides the facilities for the transfer or communication of data or information

The IT has nowadays become an important technology in academic institutions as it plays a very important role in meeting information needs of the

users and institution as a whole. The evolution and advancement of online legal resources resulting in the demise of the use of print based materials, there has been a substantive shift in the legal education and legal research. The use of emerging and eLearning technologies such as wikis, blogs, google, yahoo, podcasts, synchronous virtual classroom systems and online interactive tutorials, has created a new world of learning.

In order to excel in academic, the legal professionals invariably require certain fundamental skills such as the power of expression, the effective use of language coupled with dexterity in the art of advocacy. However, these vital attributes may not be fully attained without a proven mastery of the use of the tools of the trade as represented by law books, law reports, journals and periodicals. This in effect means that all members of the legal profession including the law teachers, law School students, post-graduate students and most importantly members of the Bar and the Bench should be involved in legal research as a matter of routine.

**2.1.1. Enhancing the quality of Legal Education**

The place of technology in an academic environment is becoming increasingly important and many universities are utilising web-based or emerging technologies to enhance student learning. Law students are one of the many groups engaging with these technologies and there has been some discussion in the legal education literature regarding the use of emerging technologies in the academic setting.[4]

It is important to note that many of the technologies outlined will have significant impact on the pedagogical approaches of those universities with distance education programs. The use of such technologies can potentially fill the gaps left by the more traditional models of education,[5] which had been 'dominated by texts and lectures and traditional didactic or transmission approaches to teaching and learning'.[6] Current literature indicates that with the rapid development in online distance education, there has been a paradigm shift in pedagogical approaches with greater emphasis on student-centred learning. Opportunities and challenges have arisen for educators to utilise these emerging technologies to create an interactive and collaborative learning environment for 21st century students entering universities and law schools.

Educational technology is now widely valued for its ability to enhance one of the most significant intellectual developments for students: their emerging ability to think abstractly. Technology has become a very powerful instructional tool to develop abstract thinking, which should be reflected also in assessment. The technology supports student performance of complex tasks that are similar to those performed by adult professionals and/or fill a genuine need of the student. Technology has been proved to accommodate learning styles and to be an effective motivator for students with specific learning needs. Furthermore, students working in collaborative-team-learning settings appear to function

better when learning events are accompanied by technology use. In addition, technology also is important when used to provide distance-learning opportunities to students who otherwise would not have access to course offerings.

Most of the Students, whether at the National Law schools or at any other faculty or law collage under the governmental or private control, utilise technology tools to enhance learning, increase productivity, and promote creativity. Students make use of productivity tools to collaborate in constructing technology-enhanced models, prepare publications, and produce other creative works. Students take benefits of telecommunications to collaborate, publish, and interact with peers, experts, and other audiences. Students use a variety of media and formats to communicate information and ideas effectively to multiple audiences. Students utilise technology to locate, evaluate, and collect information from a variety of sources. Students take advantage of technology tools to process data and report results. Students evaluate and select new information resources and technological innovations based on the appropriateness for specific tasks. Students also use technology resources for solving problems and making informed decisions. It cannot be denied that the information technology has made access to information so easy that they can obtain information on any subject at any time anywhere, but students need to verify the source of information and authenticity of information before taking benefits of such valuable technology. It may drive wrong and incoherence result if not used cautiously and carefully.

**2.1.2. Development of Teaching-Learning Skills**

Teaching-learning methodology is rapidly changing and, in many ways, becoming a more challenging because of increasingly numerous contradictory expectations. It is pertinent to mention that in the digital age of information overload with the expectation, students will learn high-level skills such as how to access, evaluate, analyze, and synthesize vast quantities of information. At the same time, teachers are evaluated by their ability to have students pass tests that often give no value to these abilities. Teachers are expected to teach students to solve complex problems that require knowledge necessary across many subject areas even as they are held accountable for the teaching and learning of isolated skills and information. Teachers are expected to meet the needs of all students and move them toward fulfilment of their individual potential even as they are pressured to prepare students for maximum performance on high-stakes assessment tests that are the primary measure of student and school success.

Information Technology can actually assist teachers and their students to make them more competent and skilful in their profession. However, as the world becomes more complex virtually year-to-year instead of the generation-to-generation pace of most of the last century educational needs continue to shift from teaching and learning isolated skills and information within each content area, to teaching skills that enable students to solve complex problems across

many areas. Educators must prepare for a technology-rich future and keep up with change by adopting effective strategies that infuse lessons with appropriate technologies. This makes authentic assessment needs even more important: Assessments must keep pace with effective instructional technology use. All this while educators at every level, but teachers especially, actively pursue professional development that enables a lifelong exploration of ways to enhance the teaching and learning research and legal education.

**2.2. The IT In Promotion Of Quality Research**

Information technology has become integral part of functioning of every academician and administrator, whether it is teacher or students or administrative authority, at any place of the world. The IT provides significant contribution in legal education and production of quality research in any field of life. The information technology has been able to equip academicians with the powers to facilitate the storage, retrieval and dissemination of vital legal information for the successful pursuit of legal research and study. The IT also facilitates the performance of routine processes like the amendment of law, indexing and abstracting services. It serves as a link among the various legal education institutions as well as foster necessary cooperation and working relationship among them. This would also facilitate intellectual resource garnering and sharing. It assists the academics in the formulation of legal studies syllabi that would have universal acceptability and applicability. The Information technology provides support in learning and teaching in specialized area of video conferencing, teleconferencing, group discussions, questions and answers sessions, and moot court trials. It assists the researchers in the publication of research findings, law books, law reports, law journal and other valuable technical reports.

The technological age is measured by only a small number of years, but in terms of the advancements in technology and impact on legal research, it is immeasurable. There can be little dispute that the rapid developments in technology and extraordinary growth in legal publishing have brought about many changes which have impacted on legal communities and have irrevocably changed the legal research landscape.[7] Over a relatively short period of time, the nature of legal information experienced a parallel transformation, and the abundance of information available online and the speeds with which it appears has changed the face of legal research'.[8] This transformation has resulted in a distinct paradigm shift in legal research from the traditional hierarchy of the print digest system, to the new world of online legal resources and computer assisted legal research.[9]

Computer data processing not only frees researchers from the cumbersome task of manually analyzing data but more importantly facilitates quick and accurate analysis of huge amounts of data from national samples or even multi-national samples covering tens of thousands of respondents. This is facilitated by

speedy telecommunications and the emergence of social networking sites, wikis, and communication tools. Another important dimension of ITs in research is the use of online full text databases and online research libraries/virtual libraries which are the direct outcome of the growth in telecommunications networks and technology. These databases and libraries provide researchers with online access to the contents of hundreds of thousands of books from major publishing houses, research reports, and peer- reviewed articles in electric journals.

Access to these online legal resources has particularly benefited legal practitioners, teachers and the students as they are now able to view courts decisions very soon after they have been handed down. Also, one of the notable advantages of the availability of online legal publications is that researchers can now access information which may have previously been unknown or inaccessible.[10] The evolution of legal information from print to online format and the influences of globalisation[11] have generated a vast amount of information available to legal communities.

**3. Challenges Arising Out Of Use Of Information Technology**

If the legal education and quality research in India need to compete and excel not only at national but also at international level, then there are certain pre-requisites for excellence in education and research, which includes assurance of accurate and latest information to the researchers. It cannot be denied that the information technology has become a powerful weapon in the hands of researcher to conduct a quality research work, but this weapon has to be used cautiously. This is due to the limitations of the data that are made available by the IT. There are the universally acknowledged problems of infrastructure like electricity and telephone facilities, coupled with the low level of awareness and education, plagiarism in information technology. Computer literacy is still essentially at its rudimentary stage. It is also urban-oriented, very elitist and highly restricted in scope. IT may be considered as a tool for research and legal education. It is well known that IT cannot substitute the researchers' research skills and human intelligence. Lot of data is available in different forms and the researcher finds it difficult to select the data for his research requirements.[12]

**3.1. Restrictions On Accessibility Of Data**

Data may be obtained from free access sources and subscribed sources. Unless a researcher is aware about the freely accessible resources he cannot get information from resources and take benefits of these sources for legal education or research or both. Information related to availability of bare act, reports of commissions, cases decided by the Supreme Court and high courts and tribunals, eBooks, research articles are vital sources for any research activity. There are various web sites where free access to information is available, but how many researchers and students are well aware of it and also the procedure of obtaining information. There are some difficulties in having access to subscribed sources that is the cost involve in procuring these sources, which may not be afforded by

majority of researchers. It cannot be denied that in majority of educational institutions whether governed by the state agency or private, lack in information technology infrastructure. Therefore the educational institutions should make some allocation of fund towards IT services. In order to ensure effective accessibility to data for legal research and legal education, IT infrastructure must be developed and maintain at all the educational education. The University Grant Commission and the Bar Council of India can ensure the compliance of requirement infrastructure development and orientation of faculty members and students.

**3.2. Hindrances Into Availability Of Data**

A large junk of data is available with free access sources and subscribed sources of information. We have all seen horrifying statistics about the information explosion, the vast size and number of electronic databases, and the exponential number of websites. As if that were not bad enough, electronic data, especially on the internet, is much more disorganized than legal researchers are accustomed to. It does not fit our established patterns, and a consistent way to cite it has not yet been developed.

Adequate information is not available in organised manner on the internet. There are too much irrelevant information and very difficult to locate the perfect source of information. Majority of Information seekers are not in a position to locate what is needed from online results and how that can be achieved. In some cases only citation or part of information is available; the researcher has to put up a lot of hard work in order to search for complete data from various sources. It is also observed that the subscribed sources of Information are too costly beyond the reach of a common man. There are various difficulties pertaining to processing data, in some cases soft copy cannot be saved only print can only be taken, and in some cases data can only be read. The protection of the copyright has also restricted the free flow of information on internet.

**3.3. Difficulties In Accessing Accurate, Latest And Authentic Data**

Researchers are able to assume accuracy and authenticity through the exclusive use of the official published print sources, powerful web search engines like Google have blurred the boundaries and now they must establish or verify the authority of the information they find in cyberspace. Once a document is digitised and uploaded to the Web, the 'assurance of quality provided by the publishers' editorial control' is not guaranteed. The document is also more vulnerable to alteration, thereby making the task of authentication more difficult.[13] Therefore, as the world of legal information becomes more digitised, it is critical that legal researchers in the 21st century have acquired the skills to not only effectively search for relevant legal information, but to also evaluate both the content and sources of information available.[14]

3.3.1. Lack of availability of Latest data: It is also important to mention majority of the free access sources and a few subscribed sources do not monitor latest development on related areas. It is for sure that outdated or obsolete data can never promote any legal education and legal research. In one instance where the researcher was looking for some data on free legal aid services to poor people, whose annual income from all resources is below some pecuniary limit, before the Supreme Court. At one place the annual income limit was mentioned as twenty five rupees, at another web site it was fifty thousand rupees, where as this actual limit has been enhanced by the Supreme Court Legal services authority regulation 2000 to one lac twenty five thousand rupees. Secondly, at some places, the Civil Liability for Nuclear Damages Bill 2010 was mentioned as pending before the parliament, which proved incorrect when I visited the web site of www.prsindia.org. There are numerous instances of such nature which is capable of effecting the quality research and legal education.

3.3.2. Lack of accurate and authentic information: Nobody can deny that the lack of accurate and authentic data has significantly affected quality of research work. One of the reasons for that may be that we believe in shortcuts and feel no need to verify the data from its original source. Sometimes it happens that the originator of data is inaccurate in itself that has happened on catena of occasions, then who is to be blamed for that lacuna. A few decisions of the Supreme Court, which is primary source of information, as on such incident narrated under the heading of introduction, got no exception from this fallacy. A researcher needs to verify the veracity of an earlier decision cited in latter decision, from the original decision of former case, otherwise that may lead to ambiguity or confusion or illogical reasoning and ultimately creation of low quality research products. In one instance where the Supreme Court Cases (web edition of the scconline, and CD of SCC cases) has mentioned that the *State of Rajasthan v. Vidyawati and anr.*[15] has been overruled by the Supreme Court in *Kasturi Lal Ralia Ram v. State of Uttar Pradesh and others.*[16] It is pertinent to mention that both these cases have been decided, as unanimous decisions, by the Constitutional Benches of Five Judges Benches. It is also well known that the decision of a constitutional bench can only be overruled by a larger bench and not by the equivalent bench of the Supreme Court.

**3.4. Impact Of Plagiarism On Quality Of Research**

Quality of research has suffered a lot due to the low quality of information that are available on internet, besides that there is another larger problem of plagiarism, which has created numerous difficulties for authentic information. Information is easily available at a click of mouse of a computer, which has led to misuse of the information technology. New ideas and thought are rarely emerging but there has been repetition of existing material in manipulative manners. It is also very difficult find out as to who is the inventor/originator of the original works. Majority of the students believe in cut copy and paste formula (CCP) to frame any research project as a part of their syllabi, which is a matter of grave concern for all stake holders in the fields of legal education and research.

Some software programmes have been developed to check this menace of plagiarism but these have not yielded any desirable results. The Bar Council of India has recognised the disease of plagiarism as a serious threat to research quality and it suggested that appropriate software should be used to counter plagiarism in publications and student assignments.[17]

**4. Final Toughts**

IT is seen as a way to promote educational change, improve the skills of learners and prepare them for the global economy and information society. IT is used to improve delivery of and access to education. IT as focus of learning, it tends to improve the understanding of the learner. The major infrastructural impediments to the effective use of online databases and online research libraries/virtual libraries include: the high cost of bandwidth; lack of well conceived national and institutional IT policies, the high cost of hardware and software, the absence of sustaining services and systems and lack of technical knowledge .

**4.1. Competency Of Teacher Is A Pre-Requisite**

The single most important factor in promoting legal education and research is the teachers, who must be well verse with the use of technology to improve legal education and legal research. Teacher's incompetency in the use of technology is often problematic. There are some difficulties in accepting information technology by Teachers who are uncomfortable with technology. They are required to be explained the benefits of the information technology and future prospects of this technique in legal education and research.

Teachers and students should not be expected to be technology infrastructure and support experts. The equipment they are using needs to be dependable and easily accessible. Teachers need to experience technology as something that they can build lesson plans around and not worry that their planning efforts and schedules are frequently impossible because of equipment failure or unavailability.

The teacher is a key variable in technology implementation and effectiveness. Technology's impact on teachers and their practice should be considered as important as student effects because students move on but teachers remain to influence many generations of students.[18] It is also important to note that no mode of information technology can substitute the requirement of a competent and proficient teacher. The success of this supplementary technique depends upon the professional skills of a teacher, which are needed to be developed only through training and research. It is strongly recommended that the teacher and students should make a habit of monitoring the latest cases and legislative enactments, pertaining to his/her area of specialisation or area of interest, not only in India and but also abroad

**4.2. Propagation Of Source Of Information**

It is well know that a person can not avail benefits of any scheme unless he is informed or made aware about that scheme. Teachers and students in large number are not well verse with technique of operating computer technology and even if they are aware but they may not be aware of the free access resources available to them in obtaining relevant information. It is for that reason awareness about the free access networks and its operation should be explained to all stake holders on priority. It is also suggested that more information networks should also be included in the list of free access of information system. The author is of the view that the well informed students and teacher can enhance the quality of research and education

**4.3. Infrastructure Development**

There are various hindrances such as Lack of technology infrastructure, Lack of technical support, Lack of high-quality digital content, and Lack of instructional vision for technology in the promotion and development of information technology in legal education and research, Which have not only hampered the growth of legal education but also quality of research in majority of Indian education institutions. The main factors that affect the adoption of IT in education are the mission or goal of a particular system, programs and curricula, teaching/learning strategies and techniques, learning material and resources, communication and interaction, support and delivery systems, students, tutors, staff and other experts, management, housing and equipment, and evaluation.[19]

Applications of ITs are particularly powerful and uncontroversial in higher education's research function The UNESCO World on Higher Education[20] has recommended some following remedial measures to enhance the IT infrastructure for development of legal research and legal education in the world.

*Four areas are particularly important. First, the steady increases in bandwidth and computing power available have made it possible to conduct complex calculations on large data sets. Second, communication links make it possible for research teams to be spread across the world instead of concentrated in a single institution. Third, the combination of communications and digital libraries is equalising access to academic resources, greatly enriching research possibilities for smaller institutions and those outside the big cities. Fourth, taking full advantage of these trends to create new dynamics in research requires national policies for IT in higher education and the establishment of joint information systems linking all higher education institutions. For these applications high bandwidth is the key priority since it allows computing power to be aggregated by linking equipment together.*[21]

Advance Information technology system should be provided at all the educational institutions whether controlled by the government or the private entrepreneurship and policy to that effect should also be framed by the institutions such as the UGC, Bar Council of India and the state education departments. If we are really serious about any development in legal education

and research then information technology is the mandatory pre-requisite requirement for it. We cannot imagine of promotion and development of legal education and research in isolation or independent of information technology.

Information technology Infrastructure at all educational institutions should include free access and subscribed sources which can facilitate in providing latest and authentic information. The information tech system should also be maintained and updated regularly, according to future requirement.

**4.4. Control Of Plagiarism**

Plagiarism is the use of another person's work for personal advantage without proper acknowledgement of the original work with the intention of passing it off as your own. Plagiarism may occur deliberately or accidentally. Plagiarism can take many forms. It includes copying material from a book; copying-and-pasting information from the World Wide Web, getting your parents to help with coursework even copying answers from a fellow student during an examination is a form of plagiarism.[22]

Quality of research is deteriorating due to low quality of inputs, restricted access and plagiarism. Plagiarism is one of the main hindrances in compromising the quality of research work. It is suggested that some software, which are available in market, should be used to monitor and control the menace of plagiarism. Besides some exemplary penalty, may be in form of negative marking or declaring such work as null and void, should be imposed if anyone is guilty of plagiarism. There is a need to frame a policy, at university or collage level, to regulate this menace of plagiarism. Educational institutions should also recognise this problem as serious erosion in intellectual values which is capable of affecting the quality of legal education and research work of any academic institution in long term. Due recognition to the original work should be given by making proper reference to the author of the original work. The author strongly believes that plagiarism, as a corruption in academic, must be treated and cured according to the policy on plagiarism as proposed by the author.

It is so pathetic that time and again we quote and refer to the Harvard Law Journal or Yale Law Journal or Oxford Law Journal or any other foreign law journal, which has been recognised all over the world, as one of the best sources of accurate and authentic information, on legal education and research, without recognising our own talents and resources. Why cannot we create such a reputation, by producing quality education and research work in India? I believe that India can do it, provided proper infrastructure, awareness, proper training and recognition of quality research work, are provided and the menace of plagiarism is handled effectively. There is no dearth of good researcher and legal educationist in India, but it is a matter of providing opportunities to them. It is pertinent to mention that majority of stake holders involved in legal education and research, have made up their mind that journals, which are being published outside India are of best quality and we cannot compete with them and by doing

so we ignore our resources and talents. Therefore we have to overcome that sort of mentality and do our best to promote legal education and research in India.

It is well recognised that the modern technology has great potential to enhance teaching and learning, turning that potential into reality on a large scale is a complex, multifaceted task. The key determinant of our success will not be the number of computers purchased or cables installed, but rather how we define educational visions, prepare and support teachers, design curriculum, respond to the rapidly changing world and access to accurate, authentic and latest information to all stake holders.

**Endnotes**

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# DEMOCRATIZATION OF KNOWLEDGE AND ROLE OF ELECTRONIC LEGAL RESEARCH

**Ketan Mukhija***

## I. Introduction

The concept of knowledge holds significance and centrality across human cultures and civilizations. Archaeological canvass of the ancient world shows that the human will to knowledge outlive the socio-cultural epochs and bequeaths true eternity to the human actors, who are the true creators of these epochs and times. The works of Confusions, Lao-tse, Moses, Christ, and Buda are an authentic testimony to their contribution to the collective knowledge heritage of mankind (Childe, 1982). However, books and knowledge are more easily available today; thanks to new mode of knowledge acquisition and knowledge sharing, which includes internet, audio and video cassettes, web portals, digital libraries, etc. This has increased the quantum of knowledge manifold, never witnessed before in the history of mankind and guides us to new advances in arts, sciences and technologies.

*"**Legal Education** is essentially a multi-disciplined, multi-purpose education which can develop the human resources and idealism needed to strengthen the legal system …A judicial officer, a product of such education would be able to contribute to national development and social change in a much more constructive manner."*

Viewing from the societal standpoint, there exist an inextricable connection between the developments in law and subsequent advancements in society. Rule of law has an all pervading omnipresence in the Indian Constitution. Any change in the socio- economic structure in India can be brought about only through the process of law because of which law is deemed to be an instrument of social engineering. The role of lawyers and judicial officers is not limited to understanding and application of law, but also includes promoting mass legal awareness, sensitizing people to sectoral as well as national issues, and mobilizing public opinion. The lawyers and judges are torchbearers of the Constitution of India and are authorized to changing the dynamics of societal living by ensuring the implementation of fundamental human rights and consequently, empowering the common man. In this context of socially deprived and marginalized classes, the role of judicial officers in enforcing speedier access to justice has assumed central focus. Legal education determines the quality of the judiciary and has a significant bearing on the rule of law, democracy and socio-economic development of a nation.

Globalization and liberalization of the world economies in conjunction with rapid advancements in information and computer technology has reiterating the

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importance of legal awareness and understanding in emerging areas of law. Law has to deal with problems of diverse magnitudes and a student of law and an advocate has to be suitably trained to meet the challenges of globalization and universalization of law. With the advent of multinationals, influx of foreign investment and volatile capital flows, there is an imperative need for competent judicial officers possessing specialized training in their subject domain of work and revamp the culture of legal education in India.

*Thus, defining democratization of knowledge as the acquisition and spread of knowledge amongst the common people, not just privileged elites such as priests and academics, there is a sound case for introducing reforms like E-Research in Legal Education that democratizes knowledge. In the following paper, the author has emphasised primarily on the role Electronic Legal Research can make in making law students better equipped and ready to enter the real world market. It is undeniable that education will serve its purpose best only when its objectives and applicability is clearly defined. The paper seeks to establish a link between effectiveness in achieving this vision and Electronic Legal research.*

## II. Legal Research: Then and Now

### II.A. Traditional Research Methodologies

Legal research underpins almost everything that is done in law. Traditionally, legal research includes finding a form, locating a rule, identifying a statute, gaining background information on a regulation, and using law books and legal databases in almost any way. The prevailing paradigms, as contained in "textbooks," are the fodder of legal research. Through research, we clarify and verify the "laws, theories, and application" of a subject-specialty paradigm to understand their effects on our situation. Legal research is our scientific experimentation; law libraries were, after all, Langdell's laboratories of the law.[1] As law changes through the revolutions described by Kuhn, as the paradigms of the various fields of law expand, legal research responds with a revolution of its own. Where once we researched in a set of common textbooks, most notably the digests, we now search the universe of information. Its effect on our context is marked.

In years past, legal research was a book-based process. Research was done within the textbooks that memorialized the paradigm of the law, and followed rules-based approaches to research that moved from known facts to a specific legal topic suggested by those facts, and then to concepts and rules within that topic. Legal research required that researchers begin with enough legal knowledge to identify the general area of law involved.[2] Frederick Charles Hicks describes how to teach this process to new law students in his work, *Materials and Methods of Legal Research,* noting that "[t]he instructor must assume such a previous knowledge as will enable the student to analyze his case, determine the principles which probably apply, search out the apposite statutory and case law and locate it in the source books."[3] Although "the law" was one discipline, divided into many subdisciplines, it was still capable of being researched as a whole.

Student researchers worked within the paradigm of "the law," using the accepted textbooks of the field. Cases were found in digests. Statutes were identified in annotated codes. Background information came from treatises, encyclopedias, and law review articles. Shared context existed from the beginning. The research process would be repeated, often several times, and research was honed as relevant principles were identified.

Bering notes that legal research became a "mechanical process" because of the West Digest System.[4] This is correct in the sense that one could master the steps of updating a topic and key number throughout the digest system, or using a single topic and key number across multiple digests, or using annotations from statutes to find cases that interpret the sections. It is incorrect, however, in the sense that a researcher also must have knowledge and understanding of the law to find the correct topic and key number in the first place, or even to choose which resources to use. Effective legal research starts within a sophisticated context of background information and knowledge. Considerable analysis and experience are required to understand the meaning and relative importance of authorities, and then to use them to craft a persuasive argument. Hicks notes that "It is a mistake to speak of any of the processes of finding the law as mechanical processes, for one has not truly found the law until one understands it, and this requires a knowledge of substantive law which comes only with the passage of time and much experience."[5]

The bulk of the resources used in print research (digests, statutes, regulations, treatises) consists of information assembled by judges, legislators, attorneys, regulators, law professors—legal professionals all—who work in a shared context gained through education and practice in the prevailing paradigm. Indexes, tables of contents, chapters, and sections all give visible and accessible structure to print resources. Shared context allowed these professionals to communicate their conclusions. And it allowed legal researchers to investigate and experiment, to find and use information, within the paradigm defined by legal professionals.

**II.B. Transition of Legal Research Methodology to e-Research**

The entire legal profession is being changed by the introduction of technology. The revolution in legal research is a small piece of this change and is a result of the migration to electronic research. In her popular legal research book, *Basic Legal Research: Tools and Strategies*, Amy Sloan describes a typical approach taught to law students learning research methods today: "No matter where you begin your search for authority, one of the first steps in the research process is generating a list of words that are likely to lead you through each resource's indexing system."[6] Sloan goes on to suggest that researchers develop these search terms either as a journalist would—by asking who, what, when, where, why, and how—or by identifying relevant parties, places, and things; claims and defenses; and relief sought.[7]

"Search terms," of course, is a computer phrase. Our students need nothing more than this to understand that electronic research is the way to go. The message is clear. Gone now from research instruction is the almost immediate transition into searching for rules by area of law. Gone with it is the structure of the print legal resources that brings immediate context to the research. While Sloan and other contemporary legal research textbook authors cover print resources fairly and accurately, and often strongly encourage their use, today's law students (and newer attorneys) are already lost to print research.

The research results of today's legal researchers feature a dizzying array of resources gleaned from widespread searching of electronic resources. Researchers may begin with Westlaw or LexisNexis, with Google or Wikipedia, or with the Web site of a special interest group. Documents that were once all but unknown and available only to a select few can now be located and read by almost anyone with a computer. Research today is fast, easy, and wide-ranging, and the resulting documents are rich with information. No longer is the legal research universe finite. In this respect, electronic legal research enriches legal research. (In terms of the choices among faster, cheaper, or better, it is much better.)

This infinite range of resources, however, is not organized in any meaningful way and is claimed to be not the best research methodology for a variety of reasons discussed under. There frequently is little, if any, hierarchy to offer structure to researchers.

Electronic Legal Research is often described by The Frankenstein Fallacy:

*"You pull a beating heart out of a body and put it somewhere else, and indeed, it still is the heart, yet in any meaningful way it is the heart no longer."*

**III. Need of E-Research in Legal Education**

The legal education in 21st century should consider the globalization and its implications on legal field at national and international levels. The Bar Council of India, the State Bar Councils, the State Governments, the University Grants Commission and the Universities have a great role to play for improving the standard of legal education in the country.[8] They should work in a comprehensive manner without any conflict. New avenues should be explored by the Bar Council of India and The University Grants Commission in the era of computer applications and information technology in the legal fields and potential uses of internet in the practice of law and legal education. They should find out the ways and means to meet the new challenges and provide better tools of research and methodology of learning for the generations to come. Bar Council of India, constituted under section 4 of the Advocates Act, 1961, is an apex body for the entire legal profession in India. The advocates Act, 1961, invests BCI with wide ranging powers to prescribe standards of legal education for the practice of law. In the opinion of Dr. N. R. Madhava Menon, legal education in India should be liberated from the dominant control of the Bar Councils and entrusted to legal academics with freedom to innovate, experiment and compete globally.

**IV. E-Learning in Corporate Law: The Value Addition of Online Resources**

Students are at the heart of learning and there are different resources that may help them achieve their learning goals. Students are encouraged to take control of their learning by using all the resources at their disposal. Each of the four resources available to support student learning will be dealt with in turn.

The *first* is human resources. The academic may play the role of a lecturer or a tutor depending on the structure of the course. Lecturing may be viewed as the 'standard tertiary method of teaching'.

The *second* resource relates to peer learning. Theoretical and empirical research has demonstrated that students' learning is greatly influenced by peer and teacher interaction. The relationship between students is very important because students may learn from each other. Research has shown that students are usually more motivated to learn when they are collaborating with other students than when working independently.[9] Peer interaction allows students to develop their own questions, search together for solutions and to share resources.[10]

The *third* category is paper resources. Textbooks, for example, are prescribed by academics because they help achieve established curriculum objectives. They also reinforce certain learning outcomes. However, over time, these books have come to be used together with a range of supplementary materials designed to enhance student learning. Study guides, learning materials, case books and workbooks have been created and incorporated into the curriculum for most legal subjects.

The problem paper resources have with currency may be remedied through the fourth category of resources available to students — electronic resources. Such resources, if designed appropriately, can be integrated into the curriculum and may enhance the students' learning experiences as they are dynamic resources.[11] They can be updated frequently, allowing learners to keep in touch with the latest developments. In Corporate Law, these resources are abundant. For instance, the Australasian Legal Information Institute (AustLII)[12] allows students to access a huge number of online sources such as Australian cases, legislation at both state and federal level, discussion papers, reports and journals. Similar sites such as the British and Irish Legal Information Institute (BAILII), the Canadian Legal Information Institute (CanLII) and Droit Francophone are available for overseas laws. ComLaw is another general legal website that can allow students to access to both current and repealed Commonwealth legislation.

**Example:** Australian Corporate Law and Online Resources.

The previous sections of this paper described the variety of resources available to help students learn the complex subject of Company Law. To illustrate how the mix of paper and electronic resources can be directly linked, the authors' involvement with the textbook *Australian Corporate Law,* published by LexisNexis, shall be used as an example. One of the reasons this textbook was

selected as an example of the type of resources available is the fact that there was a clear design philosophy relating to e-resources that was behind its original creation. This textbook has a clear focus and pitch, as do most textbooks. However, not all textbooks are accompanied by e-resources that are explicitly designed to be of benefit to all types of learners and also to help academics in providing additional support.

**A. Designing Philosophy of the Textbook**

As discussed above, the knowledge that students bring to the class affects how they deal with and assimilate new concepts. When designing *Australian Corporate Law*, the authors gave particular consideration to the fact that their target audience is primarily a non-legal one. Accordingly, the textbook clarifies certain legal terms for the students in margin notes throughout the book. The textbook identifies the learning needs of the relevant students and caters to them.[13] The strength of the book's design comes from its student-centred philosophy, complementing face–to-face classes by encouraging students to take responsibility for their own learning. Each chapter has an outline to help students find the material they need. The chapters also have learning objectives. Defining the learning objectives is beneficial to learners as it enables them to understand the desired outcomes. Learning activities, such as revision questions and problem questions, are included for students to test their knowledge and to help them ultimately to achieve those outcomes. The learning objectives are also useful for academics as they allow them to answer the following question: 'Did the student understand, appreciate, or see in a new way?[14]' A key characteristic of the book is that, at the end of each chapter, there is a guide to answering problem-based questions. This may help guide the students when they attempt to solve questions. A unique feature is the final chapter of the textbook which is entitled 'Researching Corporate Law'. This chapter is targeted toward interdisciplinary students in particular, and explains primary and secondary sources of legal authority to them. It also contains further guidelines for solving typical assessment questions such as problem-based questions and essay questions.

**B. The E-Resources Available**

*Australian Corporate Law* has a website that caters specifically for students' needs.[15] The website is designed and supported by the publisher, LexisNexis, and contains a range of different resources such as case links and journal links. When a student accesses one of the chapters online, he or she is able to check cases relevant to the chapter through LexisNexis. Such a feature is designed to motivate non-law students to go beyond the textbook and check primary sources of the law. Further, the online resources allow students to test their own knowledge through a series of web quizzes. This exercise is very student-orientated because it allows the learner to participate and be personally involved in the learning experience. Ivan Illich confirms that this is a crucial aspect of students' education, noting that 'most

learning is not the result of instruction. It is rather the result of unhampered participation in a meaningful setting. Most people learn best by being "with it".[16] 'Students' needs are therefore at the heart of the textbook and the e-resources available. These resources offer students the tools to learn by 'depending far more on materials and far less on face-to-face teaching.' However, at the end of the day, the advantage that learners derive from having all the resources made available to them really does depend on the teaching pedagogy of each academic and, in particular, whether the academic is student-centred or subject-centred. A student-centred academic will explain to students the benefit of each resource. This is important because explaining the goals that may be achieved may motivate students to learn and to use the resources.

**C. Highlighting the Goals That May Be Achieved**

The selection of different materials to be used in a course usually depends on the learning goals that students need to achieve. These goals, and how the resources will help the students to achieve them, need to be clearly explained by the academic. If learners do not understand why particular resources are useful, they may not use them or they may use them less productively. Accordingly, the academic needs to make the role of all the materials clear.[17] Moreover, students are most likely to be motivated and to want to learn more productively if they understand what the ultimate goals are and how engagement with the selected resources will help them achieve those goals. Therefore, when prescribing an online resource, it is important for academics to do the following: Explain to students why this online resource is important and interesting to them:

- How will it improve their learning experience?
- Define the learning objectives. The performance standards that a student needs to meet to reach the desired goals should be identified.
- Give advice on how students can access the online material. The ability to access the online material and locate the information may be a problem if students do not have clear instructions.

All these elements help students to understand the benefit that may be derived from these materials.

*The basic aim of the above discussion is to highlight the fact that all the resources, whether made available online or not, should be well designed and defined in terms of the objectives they seek to achieve. Making it electronic merely helps achieve this more systematically, effectively and efficiently.*

**V. Threats to E-Research**

The basic problem is that the transition from print to electronic research sources has created a gulf between today's teachers and students of the Internet generation. I gained my first insight into this point when I chided a student for the ten-thousandth time to "think hierarchically." It finally began to dawn on me

that most incoming law students simply do not think about research systematically, much less hierarchically. If the term "minimum contacts" does not appear in an index as a keyword, then it does not appear in the main volumes—never mind that it may appear under a broader term such as "personal jurisdiction." I do not blame the students. Any student entering law school today is among the best and brightest in our country, if not the world. It's just that computers have changed the way students approach research.[18]

Working on a model where legal encyclopaedias are an extension of the encyclopaedias they used in college or the Index to Legal Periodicals is an extension of the Reader's Guide to Periodical Literature has lost much of its relevance because students no longer have exposure to the print sources underlying this model. Making the situation worse, students arrive without the underlying lessons in library science—such as the importance of controlled vocabulary and taxonomies—that employing these sources used to teach. We have inadvertently found ourselves teaching from the outside.

We used to have a fighting chance when LexisNexis and Westlaw did not so closely resemble Google. Now we foist completely foreign print sources on our students in the first few weeks of law school only to allow them to return to their former ways of doing things online by the next semester. The dichotomy they learn is one of format (print = bad versus online = good) as opposed to structure (organized and annotated versus databases). No wonder we never see them again.

The "print first" model had much more significance when we used to teach print products as part of a larger research system—the West system of publications or Lawyers Cooperative Publishing's Total Client Research System. Then students learned not only what the individual titles were but also how they fit into a larger self-contained research system. As a practical matter, these systems no longer exist in print in the real world. That is to say, with rapidly shrinking print collections, the average attorney will never be exposed to the variety of print titles that formerly comprised a closed system. Thus, we lost one of the main forces behind teaching print first. It would make more sense to begin with the Lexis.com research system and save the explanation of the details of the West system of print publications as a predecessor to it for an advanced legal research class.[19]

The problem for students today is that they live in the midst of an information explosion. The sheer volume of information produced may inhibit a student's ability to locate, critically evaluate, and understand that information. Coupled with the rise in the amount of information is the Internet-induced decline of student research skills. The Internet has made it so easy to find information that students often do not know how to search for it. On this point, authorities agree. Marylaine Block, a librarian and author of Net Effects: How Librarians Can Manage the Unintended Consequences of the Internet, states the problem bluntly: "The Internet makes it ungodly easy now for people who wish to be lazy." Research guru and future Internet carina Mary Ellen Bates points out that Google is dulling the minds of our youth. As she puts it, Google … has

taught us that it is no longer necessary to go through the effort of defining our information need. We just put a word or two into the search box and let a search engine disambiguate the query and provide an answer. . . . We have given up the need to think through the reason for our query or to clearly articulate the gap in our information. Rita Vine, president of Workingfaster.com, a firm that helps organizations achieve IT competency objectives made the following comment in a recent article on information literacy in the workplace. With the Internet right in front of them, workers think everything is just a key-word search away. Research becomes an event as opposed to a process. We're faced with mass marketing that's telling us that information is easy to find—"We do all the work for you at the back end, all you have to do is type in your favourite keywords and we'll figure out what the best information is." Today's online research tools may be popular because they are easier to use, but they may be less effective in that they encourage researchers to proceed without thinking. This is a growing danger that legal research instructors must recognize and address.

Also militating against the use of the print-first model is the sad reality that for many of us such a model is no longer administratively feasible. Those who have faced budget cuts in this era of skyrocketing print costs appreciate that maintaining duplicate print subscriptions solely for teaching purposes has become an economic burden. The growth of Web courses sponsored by LexisNexis and Westlaw has made it necessary for students to have passwords from the first day. Last but not least, abandoning the print-first model would avoid the prevalent problem of students' borrowing second and third-year students' passwords to get around print-only requirements.

**VI. Conclusion**

The Road Map of New Generation of libraries can bring revolutionary changes in contemporary information infrastructure. Technology has enabled diverse distributed collection of contents to become integrated at the metadata and/or content levels, for widespread use through powerful interfaces that will become increasingly personalized. This communication provides true intellectual information access in the form of indexing, cataloguing and classification. Standards, advanced technology, and powerful systems can support a wide variety of types of users, providing a broad range of tailored services. The new generation of libraries glorifies the information access services and optimizes the infrastructure with user's requirement.

As Marylaine Block points out:

"The Internet, PDAs, cell phones, and hand-held computers have changed students information- seeking strategies and their expectations of service.[20]"

Librarians need to respond to these changing expectations with "a judicious combination of educating users while adapting to their expectations." This is what teaching legal research from the inside out is all about. It is not about caving in, it is about joining hands. Legal research is difficult; we do not earn

points by making it even more difficult. In the end, we must realize that technology has not simplified legal research—it has just helped and facilitated in making it more market-applicable. As professionals, teachers and trainers we cannot lose sight of this fact.

**Endnotes**

1. "We have also constantly inculcated the idea that the [law] library is the proper workshop of [law] professors and students alike; that it is to us all that the laboratories of the university are to the chemists and physicists, the museum of natural history to the zoologists, the botanical garden to the botanists." Christopher Columbus Langdell, Address at Harvard University "Quarter-Millennial" Celebration (Nov. 5, 1886), *in* 3 L.Q. Rev. 123, 124 (1887).
2. This approach to legal research reflects the prevailing school of jurisprudence at the time, generally referred to as "formalism." In its most basic terms, formalist decision making takes place wholly within the concepts and rules of law or, in Kuhn's words, within the paradigm. Formalism takes little account of non-law disciplines and emphasizes internal coherence. For an introduction to formalism in American legal thought, see Neil Duxbury, Patterns of American Jurisprudence 9–25 (1995).
3. Frederick C. Hicks, Materials and Methods of Legal Research: With Bibliographical Manual 18 (1923).
4. Berring, *supra* note 6, at 22.
5. Hicks, *supra* note 34, at 17.
6. *Id.* at 19.
7. *Id.* at 19–21.
8. Justice M. Jagannadha Rao was the distinguished member of a three-Judge Committee appointed by Justice M.N. Venkatachalaiah (the then Chief Justice of India) to go into various aspects of "legal education". This committee was chaired by Justice A.M. Ahmadi and Justice B.N. Kirpal was the other member.
9. O'Donnell, Hmelo-Silver and Erkens (eds), above n 21, 63.
10. David McConnell, *E-learning Groups and Communities* (2006) 61.
11. Gregor E Kennedy, David M Kennedy and Norm Eizenberg, 'Integrating Computer Facilitated Learning Resources.
    Into Problem-Based Learning Curricula' (2001) 3(1) *Interactive Multimedia Electronic Journal of Computer—*
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    <http://imej.wfu.edu/articles/2001/1/02/index.asp> at 2 December 2009.

12. Australasian Legal Information Institute <www.austlii.edu.au> at 2 December, 2009.
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14. Diana Laurillard, Rethinking University Teaching: A Conversational Framework for the Effective Use of Learning Technologies (2nd ed., 2002) 185.
15. LexisNexis, *Australian Corporate Law*, <http://www.lexisnexis.com.au/aus/academic/LNConnect/Corporations/AustCorporateLaw/default.asp > at 2 December, 2009.
16. Ivan Illich, *Deschooling Society* (1971) 44.
17. Khan.
18. John Bransford Et Al., How People Learn: Brain, Mind, Experience and School 68–69 (2000).
19. Catherine Sanders Reach, David Whelan, & Molly Flood, *Feasibility and Viability of the Digital Library in a Private Law Firm*, 95 LAW LIBR. J. 369, 374 & 375 fig. 3, 2003 LAW LIBR. J. 26.
20. Marylaine Block, *Net Effects*, SEARCHER, at 42, 45, *available at* http://www.infotoday.com/searcher/oct03/block.shtml.

# EXPLORING THE ACCESS MECHANISM FOR LEGAL RESOURCES IN DIGITAL ENVIRONMENT

**Dr. M. Natarajan***

**Abstract**

The role played by law library is discussed with the importance of open access. The benefits gained by the students, faculty, scholars and management of the organization has been given emphasize with the resources made available by the law libraries. The way resources are generated for legal studies and research has been discussed and the problems, which may be encountered due to the continuous update of the rules, legislation, change in jurisdiction, the agency (the creator), the indexes, the databases and others. Different types of resources available worldwide through World Legal Information Institute and the collaboration among different countries for sharing their legal information and the secondary sources, which play a significant role for helping the researchers, is outlined. Information communication technology (ICT) and the internet has made changes in digital technology for accessing the resources from anywhere, anytime and by anyone with freely available legal research resources and full text journals are discussed. Digital repositories are being created by some of the organizations and the access issues to and usage of information from the legal databases like LexisNexis, Westlaw and HeinOnline are discussed. The web technology leading to the social networking sites, where people are able to share their ideas, exchange views, comments on some ones views and criticize using web blogs, aggregator news and the RSS technology from the publishers are discussed in detail. Some of the barriers for accessing the legal information are given with the open access models, which are being contemplated more. It has been concluded that library professionals should be familiar with the current research trend in the field, in order to make access to the resources to their users.

*The law . . .should surely be accessible at all times and to everyone.*

**Franz Kafka**

## Introduction

Libraries are directly providing integrated services and tools to create, capture, store, share, manage, manipulate and analyze diverse data collections and resources. Law libraries do have within their grasp the possibility of access to much more extensive collections than any one of them currently holds, with greater ease than is now provided by interlibrary loan or consortium efforts. They play a key role in advocacy for eResearch, particularly in relation to open

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access to research outputs and open scholarship. Notions of equality of access to legal services, equality before the law regardless of race, ethnicity, gender or disability, affordability, efficiency, understandability, and effectiveness, are important concepts in legal studies. The definition of open access is in reference to scientific and scholarly research as: free availability on the public internet, permitting any users to read, download, copy, distribute, print, search, or link to the full texts of these articles, crawl them for indexing, pass them as data to software, or use them for any other lawful purpose, without financial, legal, or technical barriers other than those inseparable from gaining access to the internet itself (Budapest Open Access Initiative, 2002). Michael Carroll of the Villanova Law School discussed the linkages between the movement for open access to research and scholarly literature in the sciences and other disciplines, and the movement for free access to law, which has focused on cases, statutes, and other materials issued by bodies with law-making authority. Arguing for the importance of open access to legal scholarship as well as to the documents produced by courts, legislatures and other authorities, Carroll writes: "Access to law matters. . . . access to legal scholarship matters too." (Michael, 2006) . He notes not only the benefits that will accrue to legal scholars who make their work accessible on the public internet, but the improvements in scholarly communication that will result:

- maximizing the impact of individual scholarship
- reaching audiences without access to commercial databases
- improving interdisciplinary dialogue
- improving international impact and dialogue

This article deals with the law library, types of resources and their generation for the use of lawyers, students, faculty and other scholars who are doing legal research, e-resources in digital environment, digital repositories, access issues and use of social networking sites for using / discussing the topics of interest in law and legal related matters.

**Law Library**

The law library is to assist the students, faculty, scholars and management of the organization. The different types of information needs are for regular classes, assignment preparation, moot court, dissertation / report preparation, teaching, administrators, policy makers, research and legal awareness programs. It tries to provide the different types of resources from primary, secondary and tertiary sources, human resources, organizations as resource, draft constitution, supreme court reports, Indian law reports, assembly debates, Codes, acts of parliament, manuals, rules framed by judiciary, digest, e-journals, databases, and others. Many law librarians are experts in international law and legal research, as

well as its primary sources, its literature, its finding tools, and approaches to research. The concept of "international law librarianship", however, encompasses something more than a field of study in which a group of experts practice their profession.

**Resources Generation**

Law is the entire body of principles, precedents, rules, regulations, and procedures intended to assure order and justice in a civilized society. It includes constitutions, legislation, decisions–federal, state, and local, civil and criminal (ALIA Report, 2011). For example, the primary sources of Anglo-American law are created and produced by the judicial, legislative, and administrative branches of government at the federal, state, or local government levels. Much of legal and regulatory information consists of those recorded rules that society will enforce and the procedures that can implement them. Representing the interests and information needs of all citizens, these courts, administrative offices, and legislative bodies produce legal information to meet the mission of the governmental institution. Because of the specialized nature, organizational systems, and language of legal and government information, it is more difficult to use than other sources of information. The use of resources is problematic for:

1. Legal and government information is constantly growing as cases are continuously being decided and pieces of legislation, rules, or regulations are being passed or revised.
2. The majority of legal and government information is created, released, and published by courts, the legislatures, and departments or agencies. In order to access this information, researchers must know the correct jurisdiction or agency (the creator) that produced the needed information.
3. Users must consider sets of resources rather than individual volumes, as is characteristic of traditional information tools. To find out the specific legal information, a user must know the set of volumes where the law is published.
4. Legal and government information is published as either "official" or "unofficial" publications. The government publishes or contracts with a commercial publisher to publish the "official" documents. Its statute or court authority officially sanctions publication. "Unofficial" publications are published by private publishers or companies not legislatively endorsed to publish the government information. The "unofficial" publications duplicate the documents in the "official." These private publishers are faster than the government publishers and provide critical research tools as added value to their versions of the cases.
5. Traditional catalogs, indexes, databases, and other finding aids are used in libraries to identify legal and government information resources.

6. Bibliographic citations used to find information resources are different for legal and government publications than for other subject disciplines and are unique for each type of resource.

**Types Of Resources**

Content providers for law resources include the Central government, state governments, law schools, private law firms, and private corporations. This information has expanded from a minimal amount of federal government and court information to a highly visible online presence for each state and federal government branch, legislature, department, and/or agency. New resources are added to the Web every day. This availability to government information does truly make the law more accessible to everyone. The World Legal Information Institute (WorldLII) (d) is a free, independent and non-profit global legal research facility developed collaboratively by the following Legal Information Institutes and other organisations.

- Australasian Legal Information Institute (AustLII)
- British and Irish Legal Information Institute (BAILII)
- Canadian Legal Information Institute (CanLII)
- Hong Kong Legal Information Institute (HKLII)
- Legal Information Institute (Cornell) (LII (Cornell))
- Pacific Islands Legal Information Institute (PacLII)
- Wits University School of Law (Wits Law School)

WorldLII provides a single search facility for databases located on the following Legal Information Institutes: AustLII; BAILII; CanLII; HKLII; LII (Cornell); and PacLII. WorldLII also includes as part of this searchable collection its own databases not found on other LIIs. These include databases of decisions of international Courts and Tribunals, databases from a number of Asian countries, and databases from South Africa (provided by Wits Law School). Over 270 databases from 48 jurisdictions in 20 countries are included in the initial release of WorldLII. Databases of case-law, legislation, treaties, law reform reports, law journals, and other materials are included. The WorldLII Catalog provides links to over 15,000 law-related web sites in every country in the world. WorldLII's Websearch makes searchable the full text of as many of these sites as WorldLII's web-spider can reach.

In the online legal research era, access may be circumscribed by commercial legal publishers through use of technology and may depend on the nature of the user and type of use desired. Price discrimination is one way in which commercial legal publishers can segment access to their databases. In the digital era, different users may also have different levels of access to legal information. The ways in which commercial legal publishers use differential pricing and

access in the digital era is evident in their activities in the law school market. Lexis and Westlaw charge heavily discounted fees to law schools for use of their services. In contrast to the law school market, the fees charged by Lexis and Westlaw for commercial users such as law firms can be quite high, with government pricing falling somewhere between the law firm and law school levels.

**Legal And Government Reference Sources**

Secondary sources play significant role and are very helpful to researchers in identifying and explaining the law. Legal and regulatory reference tools include citation manuals, dictionaries, encyclopedias, directories, legal periodicals, and news services. The Harvard *Bluebook* is the most used citation manual to properly format legal materials. The Introduction to Basic Legal Citation from the LII written by Peter W. Martin is based on the 17th edition of *The Bluebook: A Uniform System of Citation*, known as the The Harvard *Bluebook* or the *Bluebook. (c)* The citation primer has an easily searchable table of contents with hyperlinks to material on Cornell's LII Web site. The Boston College Law Library guide for citations, Reading Legal Citations, provides explanatory information for formatting citations. (Lawson, 2003) (a)

**Digital Environment**

Digital technology has evolved new platforms and delineated new frontiers for legal research with immense potentials for developing countries. The seamlessness of the legal information sources, and the global context of the legal resources are so fundamental that new strategies are needed to fully exploit the boundless opportunities and possibilities presented by digital systems in general and the internet in particular. Since the dawn of the Internet age, the quantity of legal and government information being published and made accessible through online delivery has increased tremendously each year, as it is available from a number of sources on the Internet. Information technology of the 21st century has revolutionized the way much of this information is disseminated by the judiciary, legislature, and administrative agencies and the way that all citizens and information users may access it. Users no longer need specialized resources or have to wait for weeks or even months to access many legal and government information resources. Federal, state, and local government departments and agencies are committing to electronic dissemination of the primary sources of law, which include case decisions, legislation, laws, reports, rules, and regulations, via the Internet to disseminate this information to the public.

Secondary sources of the law are also digitally published on the Internet. These resources include directories of legal professionals and experts, encyclopedias, dictionaries, legal forms, treatises, citation manuals, legal newspapers, and law reviews or journals. Law schools, courts, government agencies, and law firms also produce, in-house, a variety of legal information resources, special reports, opinion letters, articles, guidebooks, or legal

memoranda available through the Internet. Electronically published reports or studies by law school students, faculty, libraries, attorneys, or other participants in the legal process provide valuable information on the Internet. The two most significant databases of legal and regulatory information are the subscriber systems of Lexis and Westlaw. There are many freely accessible Web sites where legal and regulatory information can be found. Although there has been a significant increase in the amount of legal information accessible on the Internet, there are limitations on the scope and coverage of this information on Web sites. From the freely available full text databases (b), there are 133 law journal articles are available for use.

**Legal Research Resources On The Internet**

Web-aided legal research resources include:

- Online library catalogue and home pages of libraries and universities
- Online databases
- Online magazines and journals
- Online texts
- Web pages and hyperlinks
- Discussion groups and lists
- Usenet groups
- Virtual libraries

The legal research of the future will be highly IT-driven, internet-facilitated and professionally demanding. The legal researcher of the future must be IT competent, internet literate and professionally conversant with the evolving electronic information environment. (Omekwu, 2005).

**Digital Repositories**

The collections of published materials (usually, scholarly articles and research papers) that are placed online for free, open-access download—are a fairly recent development in the field of information management, but they have quickly made a major impact on just how scholarly and professional communications can take place (Koulikov, 2009). Some of these repositories, such as Social Science Research Network (SSRN) and SelectedWorks, are inherently multi-disciplinary, focused on individual authors, and operated by third party organizations. Another type includes the institutional repositories being established by many academic institutions to disseminate the work of their faculty. (Yvonne, 2005). Access to legal information of all types is essential for lawyers and other legal professionals, and also for citizens whose lives are affected by legislation, presidential court decisions, and administrative rulings and regulations. To be understood and applied, however, legal authorities need to be explained and interpreted, as well as easily accessible. Both the texts of legal

authorities and commentary on them must also be preserved for future users. The issues involved in access and preservation of electronic legal information are closely intertwined, but they are not new. As Harvard University Librarian Robert Darnton puts it, "Information has never been stable." (Darnton, 2009). But they have changed in an age when much valuable information will never be formally published in print.

**Access Issues**

Access to and usage of information has been one of the essential developments in this century. Means of access to legal information refers to the ways; means or methods used to access or acquire the right legal information from the available sources. In recent years, the primary audiences for law journal articles—legal academics and the legal profession—have enjoyed increased and improved electronic access to both current and older legal scholarship through the primary legal databases, LexisNexis and Westlaw, and the extensive collections offered by HeinOnline, JSTOR, and other aggregators of journal content. For those in the academy, this access is funded by libraries and comes without direct individual cost. In addition, new law journal articles are increasingly freely available prior to formal publication via electronic working paper series, such as those supported by the SSRN and bepress (which for most users are also usually library-funded services and appear to be free to law faculty). As a result, electronic access has become the preferred means for locating legal scholarship at the same time as law libraries are facing increased pressures on their budgets and their parent institutions are looking to library facilities to provide space for expanding programs. Both factors have placed under stress the library's traditional role as purchaser and preserver of print law journals. Should print versions of journals available electronically be purchased and preserved by libraries if print is already no longer the primary means for accessing their contents? Can we rely on digital files for long-term access and preservation of legal scholarship? (Danner and others, 2011).The format in which a journal is digitally published matters. Both archiving and presentation formats are inadequately addressed by the customary solution in use today, the Portable Document Format (PDF). PDF reliably recreates and fulfills a key function in the redistribution of published text, but it fails to fully exploit the promise of digital media. (Joe Hodnicki, 2010)

Legal and government information search engines provide a second method of accessing the specific subject or topic information that is being researched. These legal search engines are more accurate and provide better precision when searching for resources or documents than is available using general information indexes or search engines such as Yahoo or Google. Meta-indexes and search engines provide comprehensive coverage of legal and government information on the Internet and allow users to search specific Internet resources related to the law, government, or regulatory information. There are currently over 100 legal indexes or search engines that provide

databases of resources in exclusively legal and government information domains rather than the entire Internet.

**Social Networking Activities**

The library community is moving towards digital technologies to provide the public with easy, reliable, and permanent access to authentic government information by using Internet technology. The most exciting innovation in the legal information world over the past five years is the application of Web log technology to this field. The *Merriam Webster's Dictionary* defines blog as a Web site that contains an online personal journal with reflections, comments, and hyperlinks. They are Web sites that use the form of a chronologically ordered online journal (Lawson, 2003). A Web log author–or "blogger"–can publish and maintain an ongoing, informative dialogue with an unlimited number of readers. Blogs filter information and archive it in an enduring chronological manner. These Web logs, blawgs, or personal Web pages created by attorneys, judges, law school professors, librarians, and publishers contain a myriad of content from personal opinion, articles, commentary, legal news, and current interest updates to reviews of legal Web sites. On some sites, bloggers almost act as journalists for the legal field. For example, *beSpacific*, maintained by Sabrina I. Pacifici, a DC area law librarian and publisher of Law Library Resource Xchange, spotlights news, resources, and information technology related issues.

For people wanting to receive continuously current legal research and government information, they can subscribe to receive a news aggregator. A news aggregator tracks the information an individual is interested in and organizes the information on a personal Web news page. The aggregators use RSS technology, which stands for "rich site summary" or "Really Simple Syndication." RSS provides a format for organizing online information sources and the content of news-like sites, including Web logs, news services, and Web sites that make their content available in RSS. The aggregator software and services collect those syndicated feeds and present them to end users in a variety of ways. For example, the U.S. Department of State, Bureau of Public Affairs provides RSS feeds for top stories from the State Department home page–daily press briefings, press releases, and remarks by the Secretary of State. With RSS technology, desired information is served directly to researchers customized according to their interests in feeds of topic-specific news headlines. (Sally, 2008).

Web 2.0 in legal scholarship is becoming almost commonplace, as if it had always been there. After all, even librarians who bemoan law students' faithful citing to Wikipedia as the coup de grace of "good" research must admit they've gone there once or twice themselves and recognize it for the amazing way it has organized massive amounts of information. Web 2.0 has even invaded some law firms, with wikis on intranets as a knowledge management tool and blogs written by attorneys as marketing tools. Students will see these technologies in practice. Therefore, it seems natural that they should receive exposure to such technologies as part of their law school experience (Lewis, 2002).

**Barriers**

General barriers relating to the ability to access legal information and advice services which were identified include:

- technological barriers, particularly for telephone and web based services
- a lack of awareness of where to obtain legal information and assistance
- a lack of appropriately communicated legal information
- the high cost of legal services
- a lack of interest by some legal practitioners in older clients
- potential conflict of interests when legal practitioners for older people are arranged by family members.
- difficulties in accessing legal aid, including restrictive eligibility tests
- lack of availability of legal aid for civil disputes
- lack of specialized legal services for older people, particularly in rural, regional and remote areas
- lack of resources in community legal centres to tailor their services to the needs of older people. (Ellison and others, 2004)

**Conclusion**

Providing access to the public is a public service, but there does not appear to be a general public access right. The case law seems to sug-gest that, rather than deciding public access policies based solely on considerations of the public or private nature of their universities, the amount of public funding received, or their library's depository status, librarians can consider the individual characteristics of their own universities—the university's mission, their patrons' needs, their financial circumstances, and the place they see for their academic library in the larger community. To work effectively with faculty, law librarians must do more than become familiar with a professor's current research interests. To be creative in finding new ways to support faculty research, they need also to be knowledgeable about how scholars work, to understand the cultural differences between librarians and the creators of scholarship, and how the Internet has impacted relationships between the two groups (Lewis, 2002). The number of legal and government information resources that are published or made available on the Internet is continuing to grow at a phenomenal rate. Open access models are now being contemplated more generally as a potential way to address persistent and recurring issues of access to legal information. The development of open access means of accessing legal scholarship and other legal information may provide an increasingly important counterweight in the current environment of greater industry concentration. Commercial publishers have historically served an important and useful function as intermediaries in the

development of the legal information industry. From an access perspective, the current degree of industry concentration in the long run is likely to be a negative factor for a significant portion of users, particularly noncommercial users not located at law schools. (Arewa, 2006). In the legal information environment of the twenty-first century, the communities served by law libraries and law librarians have expanded to encompass all those with needs for accurate legal information and the ability to understand how it affects them.

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**Web Resources**

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(c) http://www.law.cornell.edu/citation/

(d) http://www.worldlii.org/

(e) http://www.soros.org/openaccess/

# STRATEGIC MANAGEMENT AND IMPLEMENTATION OF LEGAL EDUCATION IN INDIA—A PERSPECTIVE

**Dr. Priya Vinjamuri***

**Abstract**

*The emerging trends in science, technology and the rapidly shifting terrain of globalization of businesses and the ensuing legal provisions necessitate the legal fraternity to understand and adapt to the consequences of development in science and technology and thus enforce strategic planning of legal framework on par with the international standards.*

*The application of managerial principles to the implementation of an international business model for legal and para-legal services is an incentivized and highly emerging area of management and law that needs to be understood, pursued and strategically structured.*

*The paper focuses on the law reforms that have contributed significantly to the strengthening of legislative processes in supporting constitutionalism, rule of law and democratic governance and the challenges which the legal education reform process encounter and the proposed mitigation strategies specifically those applicable to the legal education system in India.*

*The paper is an attempt to create awareness on the requirement for strategic quality management in the legal arena, that can be considered as a service industry from the functional view point.*

**Introduction**

In the global economy, the legal fraternity in general and the Indian legal institution in specific must enhance their capacity for development in presentation, communication and technology besides promoting innovation, thereby, enabling the continuous creation of additional value for clients, lawyers and judges.

The Indian judiciary, in a nutshell, is in need for a strategic and quality enhancement of its resources to foster a sense of reality and trust in the institution and create awareness of its importance to the public at large and the institution in specific. For that reason, introduction of various aspects that include:

- Awareness on the importance of justice with focused emphasis on legal education and awareness.

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- Creation of viable and quality resources for enhancing the skills of the judicial components (the students of law, the lawyers & advocates, the solicitors, the drafters and the judges).
- Management of the databases for faster retrieval and documentation.
- Development of innovative technologies by utilizing the results of advances in technologies in the most productive manner to facilitate faster judgments.
- Creation of an environment for competitive trends in creation of new products and services.
- The management of legal technology and innovative trends that aim to maximize the cost-effectiveness of investments in technology development and ultimately contribute to the legal enterprise value.
- Strategic IP Value Creation.
- Strategic Licensing & Technology Commercialization.
- Strategic IP Enforcement.
- IP Acquisition & Inbound Licensing.
- Strategic Marketing of Ideas, Brands & Capabilities.
- Strategic quality analysis using a balanced scorecard.

**Understanding Constitutionalism, Rule Of Law & Democratic Governance**

Every democratic government draws its legitimacy from its constitution. National constitutions set the tone, the spirit and the framework from which all other laws and the form of government draw legitimacy**.** Constitutions guide the nature and type of political and legal systems which national governments embrace in any democratic order. They lay out fundamental principles such as constitutional principles relating to the legal and political authority to govern, the powers to govern and limitations on such powers, conditions for the exercise of the authority to govern, the protection of fundamental rights and freedoms and their limitations and the need to uphold constitutional principles and the rule of law. Further, the fundamental principles relate to policy and legislative measures which the State must adopt and implement in order to promote the welfare and development of the people. In order for the State to implement the policy and legislative measures, the three organs of the State namely, the Executive, the legislature and the Judiciary must exercise their respective constitutional mandates independently while adhering to principles of democratic governance that include transparency, accountability and rule of law. Therefore, it follows that the notion of constitutionalism embodies various facets of democratic principles, which are interdependent and range from transparency, accountability, rule of law, respect for human rights, all which lead to democratic governance.

**Discussion On The Various Aspects Of Strategic Creation Of Quality In Legal Management**

The awareness of the importance of justice and environmental justice in particular can be created by drawing upon the realms of academic investigation, government and public policy, sociology, healthcare and the philosophy to unite environmental awareness with the quest for social justice. Generation of a sense of responsibility to promote awareness and fairness when dealing with issues of environmental quality, social justice, technological innovations and their utility, legal implications in and justice in less treaded areas of human rights, consumer awareness, tribunals and international laws and procedures can be facilitated by innovative and strategic legal management by creating forums and workshops on these crucial areas of immense ignorance yet importance.

Some of the areas where the need for awareness is rampant and there are many issues, dilemmas and undiscovered areas include environmental racism and civil rights i.e. the targeting of certain communities for undesirable land use, from environmental equity characterized by a complexity of cultural norms, rules, regulations, behaviours, values, policies, and decisions leading to the promotion of sustainable communities and the realization of high potentials, or contribute to the degradation of environments by impeding communities from enjoying quality social, political, and environmental health.

Emphasizing the importance of promoting an understanding of the central issues of race, income, intent, pollution control versus prevention, positivism and participatory research, and top-down versus bottom-up perspectives of investigation, public awareness, understanding of environmental issues and concerns, comprehension of the various Intellectual property laws and constitutional provisions.

Many conferences over the years have contributed to the organization and dissemination of information vital to the growth of the environmental justice movement but the awareness of information related to such educational and informative content are crucial to the strategic management of legal resources thereby providing quality legal information.

Creation of a good and effective legal suggestion system and implementation of the key areas that are highlighted to promote and improve in their services induce the confidence and boost the morale of the legal fraternity. Unprejudiced implementation of ideas and security for the position and financial stability are the key areas which need emphasis in the Indian legal system as these are very sensitive and challenging aspects the mar the systematic and effective functioning of the legal system. Effective and quality human resource management is another application aspect of effective quality legal management.

**Quality In Strategic Legal Management**

The different aspects of strategic quality management that need to be thoroughly understood and applied to create an effectively efficient quality legal

management system include financial strategy, basic business strategy, research strategy, and most importantly a wage system based on ability. A quality feed-back system with a creation of an understanding and awareness of the overall direction of the legal organization in particular and the legal system in specific, as there is nothing general about a judicial functionary, and the importance of reinvesting the profits of knowledge and finance to promote further growth and technological advancement is crucial to the growth of a technologically savvy judicial system.

The different steps that need to be strategically adhered to and followed include strategy formulation and strategy evaluation covering the various aspects of suitability, feasibility, acceptability by applying and analysis the various strategic management theories such as the Growth and portfolio theory the marketing revolution theory, the Japanese challenge, competitive advantage theory, the concepts on strategic change and information, technology and knowledge driven strategies.

Therefore, legal strategic management is an ongoing process that evaluates and controls the clients and the judicial system in which the legal process is involved. It assesses its international competitors and sets goals and strategies to meet all existing and potential competitors in terms of quality and time efficiency and then reassesses each strategy annually or quarterly [i.e. regularly] to determine how it has been implemented and whether it has succeeded or needs replacement by a new strategy to meet changed circumstances, new technology, new competitors, a new economic environment, a new social, financial, or political environment.

**Omron's Philosophy Of Kyouso**

Omron's philosophy is "Let machines do what machines can do and humans should enjoy the activities in more creative field."

In one word, "automation" is the value that has been ever-present in our minds as we have contributed to society since the foundation of Omron. Globally, Omron strives to achieve ***"Kyouso"*** (collaborative innovation), whereby we work to create new and better things with other people and organizations. In this activity, we recognize the importance of ***"Wa"*** (harmony) with partners. With this in mind, there are two key points in conducting successful collaborative activities. The first is "open minded communication." For truly valuable output from collaboration, sharing values and visions with each other is important. The second is "finding the right partner." For the best achievement, partnering with the top people is strongly expected. In order to have the best association, we must be aware of the need to manage ourselves to raise ourselves technically and ideologically to communicate with the top people. This concept is applicable to the legal research and innovative trends and quality value creation in legal management.

Research and legal research in specific is the effort to create something that has not existed in the world before. The value of this research is shared with society only when its achievements are presented to society as a new beneficial product. However, researchers need to have their own "will" and "strategy" to accomplish this task. Such "will" is the sense of what each researcher can accomplish and how to match the value of that accomplishment to societal needs. No matter how deeply the researchers pursue a technology, especially in the legal perspective, if this technology does not become a commercial product, the achievement does not have any value. And the "strategy" is how each researcher overcomes a lot of hurdles and obstacles in order to achieve the will. To facilitate the development of such a mindset among each and every researcher, as an example, poster sessions have to be facilitated in the legal institutions and universities with many young lawyers periodically to discuss each researcher's "will" and "strategy" with their supervisors, colleagues, and researchers from different fields in the study of law.

A combination of the right research and the right experimental design is needed to reach effective and realistic and just conclusions. Various risk factors will have complicated interactions and result in different combinations of exposure and deliverance of justice. Actively proactive checks are an essential pre-requisite for the efficient functioning of the judiciary and any miscalculation in the legal process and product during development is bound to have disastrous results. The need for education and awareness of issues of judicial and legal quality and the rights all individuals are entitled to is one of the early steps towards strategic legal management of the resources. In today's world, there is inequality in all spheres and in all levels. Right to information and information being delivered to all is one important advancement that can be achieved through legal process that is technologically advanced, for instance through a world-wide network of legal functionaries working towards creating an awareness to the provisions of the law and international issues that affect the sustenance and quality of life. To quote Aristotle, the distinction between the absolute and relative inequality is put into practice with "equals treated equally, un-equals unequally. Relative inequality simply recognizes the differences inherent in human individuality."

**Recent Trends In The Clinical Learning Of Law**

The report such as the Mac Crate Report may be used by the teachers of law to fine tune the legal education and the lacunae in the area of legal education. The Report of the ABA Task Force on Law Schools and the Profession: Narrowing the Gap and its Statement of Skills and Values to help live-client clinics is a strategic application tool for enhanced legal education. The report implemented in the USA is a document that provided clinical law teachers with a new opportunity to strengthen clinical education through negotiation within the law school and with the larger legal community. The report is an effort to practical learning in the law schools adopted across the country to legal

education clubbed with clinical application of the study of law. This can be adapted in the Indian context and made mandatory by the Bar Council of India so as to provide a hands-on experience of a legal clinic and its implementation during the course of legal education.

A combination of the class room curriculum and the analytical clinical methodology which should be the prevalent theme in discussions of live-client clinics increases the accountability of the students during the course of their study. The combination of the two is important as it allows for a stringent analytical and substantive understanding of the subject area of law.

A good clinical teaching of law requires that need to develop counter-narratives, such that if the theme of the clinical narrative is insubstantial, the counter-narratives must be capable of reinforcing and explaining the concept. Therefore, a good clinical teaching of law does far more than wed knowledge of legal doctrine and legal analysis with common sense. Though expensive, the live-client clinics owing to their simulation focus may be considered as an alternative to seminars, moot courts and law reviews and may be considered as an add-on to the main course of substantive legal education

Development of multi-year strategies for clinical implementation of the live-clinics of substantive law, negotiation subjects, which is a key to litigation and the practice of law, should be implemented so as to promote a live dealing of the legal procedure during the course of study. Curriculum and hiring of legal fraternity to teach, adapt and implement the clinics is another challenge that can be easily surpassed by emphasising on the need for educational value vis-à-vis use of live client clinics and simulation courses of law.

The simulation courses of legal education such as legal research and writing, appellate advocacy, interviewing and counselling, negotiation, alternative dispute resolution, trial advocacy should be taught with the lawyering skills of problem solving, legal analysis and reasoning, legal research, factual investigation, oral and written communication skills, client counselling, negotiation, litigation and ADR procedures, organisation and management of legal work, and recognizing and resolving ethical dilemmas.

The coalitions with law schools in India formalising the need for simulation clinics as a part of the legal curriculum, integrated approach to the learning and application of law and legal studies is important to facilitate a thorough understanding of the need for a change in the strategy in the implementation of legal education.

Support should be sought from outside the education system from the Bar Examiners, Bar councils, the Bar and alma of law schools, from the legal firms and organisations to enhance the standard of legal education and its efficacy.

**Conclusion**

The paper concludes on a suggestive note to implement strategic changes to the legal education system and impart education in the law schools so as to have a theoretical and practical application of the laws, and most importantly a live-clinical system so as to facilitate the varied lawyering and legal priniciples quintessential in the understanding of the importance of the change in legal education.

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# LEGAL EDUCATION IN DIGITAL AGE: AN ANALYSIS

**Dr. Rupam Jagota**
**Karishma Abrol***

**Introduction**

Legal Education is a branch of knowledge which cannot be compartmentalized as subjects are human beings with functional brains and not static machines .In the globalized digital age of today where press of a button adjusted to codes can alter the course of action, legal education has to address the multifaceted growth of law. It has to equip the budding lawyers with the clinical digital techniques in contrast to traditional deliverance. The future age is an electronic era and law has to be updated to handle the challenges as well as new laws have to be drafted to find procedural and investigative tools to educate them to find solutions in the jurisprudence sea of legal education . A lawyer with a multi-disciplined, multi- purpose education would be able to contribute to national development and social changes in a constructive way.

The **Computer Age** or **Digital Age**, is an idea that the current age will be characterized by the ability of individuals to transfer information freely, and to have instant access to knowledge that would have been impossible earlier.

The research paper focuses on the fact, whether the positive or negative vision of the digital future prevails will be determined, by current decisions and those made in the next few years in the halls of government and in corporate boardrooms. Research has contributed to the resolutions of several recent legislative and policy decisions in view of the increased invasion of technology & net over the print version. Future research needs to be designed with the public policy agenda in mind. The academic community has much to contribute to the debates over new developments in the digital age resulting in the emergence of cyber laws in combination and addition to earlier codified laws .The paper analyses the factors, reasons & problems related to jurisdiction in cyber crimes, fixing of liability to impose penalty and punishment, the investigative and procedural difficulties in handling and procuring evidence which is narrow, cumbersome, incompatible with new technology. Whether that role is ultimately fulfilled will depend on fresh, creative thinking and a firm commitment to move teaching, learning, and the university into the digital age.

Today's digital kids think of information and communications technology as something akin to oxygen: they expect it, it's what they breathe, and it's how

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they live. The researcher has enumerated few suggestions to address the evolving global phase of legal education in the digital era. Universities could shape online activities into socially contextualized learning environments in which students actively engage in the construction of their learning experience and immediately use their course content. An open, persistent system not bound by semesters or strict discipline borders could allow students to develop over time and track that development along several paths. This system could form the basis of a liberal education grounded in practice.

Education is moving into the digital age. Pedagogies have changed to engage the latest digital technologies. The methods of distribution are now a blend between face-to-face and some other combination of virtual interfaces. The content is moving from traditional text-based learning to text-plus-multimedia. The community is now involved in the development of content.The world of education is still in transition; the move to an all-digital environment will not be completed for some time to come. The cost of creating high-end multimedia content, although coming down, is still prohibitive for all but the very edge of the marketplace.

The digital age has brought profound change to academic law libraries. Numerous outside entities with which we work - accrediting agencies, publishers, other libraries, library organizations and consortia, information technology departments on campus and in legal education, to name a few - are also dealing with, and reacting to, the impact of digital technology from their perspectives. Academic law libraries cannot operate in a vacuum in responding to change, particularly if we want to master the future we envision rather than drift towards a future with no controls. Collaborations with these external entities, whose response to the digital challenge will greatly impact our futures, will enable us to influence their direction and achieve outcomes that best serve the academic law library and its place in legal education.The importance and necessity of these collaborations, therefore, prompt this scenario of the future.[1]

Digital technology revolutionizes many of the ways we receive and use information every day. The availability of online resources has changed everything from hunting for a new house to reading the newspaper to purchasing plane tickets, and as a result has disrupted established structures (such as the real estate, news, and airline businesses). Telecommuting has become widespread. The market for popular music has transformed dramatically. Internet telephony presents a real challenge to established telecommunications companies. Millions of blogs, social networking sites, and interactive online games have created new modes for interaction and expression. In short, the advent of digital technology touches almost every aspect of modern life.[2] Perhaps no area holds more potential for such transformation than education. Many diverse and exciting initiatives demonstrate how rich sources of digital information could enhance the transfer of knowledge. Yet at the same time, the change in education arguably has been less radical, especially in

comparison to mundane endeavours such as selling a used bicycle or booking hotel rooms. There are many complex reasons for this slow pace of change, including lack of resources and resistance to new practices. As this white paper explains, however, among the most important obstacles to realizing the potential of digital technology in education are provisions of copyright law concerning the educational use of content, as well as the business and institutional structures shaped by that law.

Digital technology makes informative content easier to find, to access, to manipulate and remix, and to disseminate. All of these steps are central to teaching, scholarship, and study. Together, they constitute a dynamic process of digital learning.

As per ITAA 2008, Section 73 is given as follows:

[Section 73] Penalty for publishing electronic Signature Certificate false in certain particulars:

(1) No person shall publish a Electronic Signature Certificate or otherwise make it available to any other person with the knowledge that:

   (a) the Certifying Authority listed in the certificate has not issued it; or

   (b) the subscriber listed in the certificate has not accepted it; or

   (c) the certificate has been revoked or suspended, unless such publication is for the purpose of verifying a digital signature created prior to such suspension or revocation

(2) Any person who contravenes the provisions of sub-section (1) shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both.[3]

**Meaning**

The **Information Age**, also commonly known as the **Computer Age** or **Digital Age**, is an idea that the current age will be characterized by the ability of individuals to transfer information freely, and to have instant access to knowledge that would have been difficult or impossible to find previously. The idea is linked to the concept of a digital age or digital revolution, and carries the ramifications of a shift from traditional industry that the industrial revolution brought through industrialization, to an economy based on the manipulation of information, i.e., an information society.

The Information Age formed by capitalizing on the computer microminiaturization advances, with a transition spanning from the advent of the personal computer in the late 1970s to the internet's reaching a critical mass in the

early 1990s, and the adoption of such technology by the public in the two decades after 1990. Bringing about a fast evolution of technology in daily life, as well as of educational life style, the Information Age has allowed rapid global communications and networking to shape modern society. The digital age is started in second millenium, and it means that every company, shop, or bar, have at least one computer. When we say, this is age of...,first we think, theology of that age. Digital age is started,(digital photos, digital computers, digital books, digital airplanes...). The schools have digital structures,(on knowledge I mean), and we do not writing just on paper, we can write on computer, phones, PDA, or something like that. A new generations of cars have auto-control, when you are sleepy.

**The Impact On Jobs And Income Distribution**

The Information Age has impacted the workforce in several ways. First, it has created a situation in which workers who perform tasks which are easily automated are being forced to find work which involves tasks that are not easily automated. Second, workers are being forced to compete in a global job market. Lastly workers are being replaced by computers that can do the job more effectively and faster. This creates problems for workers in industrial societies. Jobs traditionally associated with the middle class (assembly line workers, data processors, foremen, and supervisors) are beginning to disappear, either through outsourcing or automation. Individuals who lose their jobs must either move up, joining a group of "mind workers" (engineers, attorneys, scientists, professors, executives, journalists, consultants), or settle for low-skill, low-wage service jobs.

The "mind workers" form about 20% of the workforce. They are able to compete successfully in the world market and command high wages. Conversely, production workers and service workers in industrialized nations are unable to compete with workers in developing countries and either lose their jobs through outsourcing or are forced to accept wage cuts. In addition, the internet makes it possible for workers in developing countries to provide in-person services and compete directly with their counterparts in other nations.

This has had several major consequences:

Growing income inequality in industrial countries

The polarization of jobs into relatively high-skill, high wage jobs and low-skill, low-wage jobs has led to a growing disparity between incomes of the rich and poor. The United States seems to have been more impacted than most countries; income inequality started to rise in the late 1970,'s, however the rate of increase rose sharply in the 21st century. Income inequality in the United States has now reached a level comparable to that found in South America.[4]

**Teaching and learning in traditional schools,** from kindergarten to graduate school, benefits from digital technology that enables new pedagogical methods and allows easy access to vast quantities of educational content. Examples of changes that capitalize on this potential include:

- A planned online network for high school history teachers, allowing them to share advice and classroom resources
- Classroom teaching enhanced with new media such as PowerPoint slides or video and audio clips
- Extension of the classroom dialogue through mechanisms such as e-mail or class blogs and wikis;
- Student authorship of diverse content beyond the traditional term paper and diorama, from video and audio to hyperlinked web pages.

**The Digital Millennium Copyright Act**

A further addition to rights holders arsenal is the ability to use technological mechanisms to prevent unauthorized copying of works. Such mechanisms are most widely known as Digital Rights Management systems though they are also sometimes called Technological Protection Measures or copy prevention technology. By whatever name, DRM systems are encoded into digital content by a variety of means, such as encryption or watermarking, so that users are incapable of accessing or using the content in a manner that the rights holder wishes to prevent. Sometimes, as in the case with most commercially distributed DVDs, the DRM system simply aims to prevent all copying indiscriminately.

Copyright law reinforces the power of DRM systems through the Digital Millennium Copyright Act, found in chapter 12 of the statute. In general, the DMCA seeks to forbid the circumvention of a DRM system defined as a technological measure that effectively controls access to a work protected by copyright law. It also outlaws development or trafficking of any DRM circumvention device or technology.

There are very limited exceptions to liability under the DMCA, but notably they do not include any defense based on an assertion of applicable exceptions under copyright law, such as fair use. Defendants who have a fair use right to reproduce content do not thereby have a defense if they must circumvent a DRM system to gain access to that content. There is also an exemption from civil damages for certain defined educational institutions under section 1203(c)(5), but it is available only if the defendant accused of circumvention sustains the burden of proving, and the court finds, that the library, archives, educational institution, or public broadcasting entity was not aware and had no reason to believe that its acts constituted a violation.It would be extremely difficult for any responsible educational institution to demonstrate such ignorance of a well-known legal restriction, and individuals are not eligible for the same lenience.Consequently, educators are potentially vulnerable to civil or even criminal penalties if they interfere with whatever technological restrictions rightsholders choose to impose on the use of content.

**DVDs in Film Studies Classes**

A recent addition to the academy, film studies applies the techniques of established disciplines, including psychoanalysis, literary studies, and linguistics, to examine the art of cinema. Though a small group of intellectuals recognized the significance of film as a medium for artistic expression in the early twentieth century, film studies did not surface as an accepted area of scholarship until the 1960s. In the decades since, the popularity of film studies has spread dramatically, so that dozens of colleges and universities now offer undergraduate and graduate degree programs in film studies, and many more offer courses in the field. Technological advancement, including development of the DVD, has fueled this growth. And with the emergence of cinema as a crucial element of modern culture, film studies is certain to continue to develop as an important area of scholarly endeavor.

The ability of teachers and students to view and critique excerpts of film essentially, movie clips is a fundamental building block of serious study in this area. One of the most common means for professors to teach students about film is to show a series of excerpts from different movies that illustrate a common point. For example, a professor may wish to screen clips from different films that use a certain camera angle to produce a particular visual effect. Film studies professors also present and discuss relevant clips from assigned works during lecture, just as literature professors examine novels in class by reading important passages out loud.

Creating compilations of such excerpts (or, as they are sometimes called in a throwback to older technology, clip reels should be a relatively straightforward process using DVDs. Digital technology should also enhance the ability for students to have access to clips for homework or other study outside of class, either online or through distributed DVDs. In fact, our research and interviews with film studies professors demonstrates that, for a combination of technological and legal reasons, the opposite has occurred. The DRM systems used on DVDs, and the restrictions of the DMCA, interfere with these educational uses of film content. We have found that many film studies professors nonetheless reap the benefits of digital technology for their teaching but only by bypassing DRM systems in likely violation of copyright law.

Rightsholders almost always distribute film content on DVDs with DRM systems and a number of other technological limitations embedded in the discs. These technological barriers are reinforced by legal ones. As discussed above in section 1.2.3, the DMCA outlaws circumvention of DRM systems and the creation or distribution of circumvention tools. Even though showing a clip of a movie in class is unquestionably permissible, under both face-to-face teaching exceptions (see section 3.1.1) and the fair use defense (see section 3.2), the DMCA does not recognize any comparable exceptions. Professors who circumvent the DRM systems in DVDs to enable such uses thereby expose themselves to civil or even criminal penalties.

The most significant DRM barrier is CSS. Commercially available DVDs are encoded in CSS, an encryption and authentication scheme that prevents copying of video files directly from DVDs. CSS does not merely block DVD copying. Rather, CSS is an encryption system that scrambles DVD content and restricts playback to licensed devices equipped with keys for decoding the scrambled content. This encryption, combined with the terms of the CSS license, prevents copying by regulating the devices that play DVDs. Put differently, CSS restricts *access* to DVDs as well as duplication of them.

Clips taken from videotape or other analog formats are not adequate substitutes for the educational needs of these professors. Most obviously, the resultant copies are lower in quality than the originals (which most likely were already inferior to DVDs of the same film). A sophisticated analysis of cinema requires access to a version of the film in excellent quality, not the grainy images found on bootleg videos. Tape also must be copied in real time, making the creation of larger clip reels unrealistic. Finally, some analog formats do not lend themselves to creation of clip compilations whatsoever. For example, most professors do not have access to the equipment necessary to duplicate and splice clips from 16-mm film.

As a supplement to presenting segments of works in class, film studies professors occasionally distribute excerpts of works to students as part of the course curriculum either by handing out physical copies, or by posting content on an intranet.Professors who wish to distribute movie clips online encounter issues similar to those faced when distributing physical copies of content. Posting analog content to the internet (or an on-campus intranet) is a costly and time-consuming proposal, since it is necessary to digitize analog content before putting it online. This conversion reduces the quality of formats such as 16-mm film, since some resolution is lost during digitization. Clips from DVDs, in contrast, are easily compiled and posted to with the use of software tools such as Fast DVD Copy 4 and Cinematize. Unsurprisingly, the majority of film studies professors who post content online derive that content from DVDs.

**Obstacles To Digital Learning**

**• Uncertain or Unfavourable Copyright Law**

Lawyers tend to look first to legal regimes when surveying the landscape of a public policy issue. At times, this is the wrong place to begin, because economic or social forces play a greater role in shaping practices. In studying educational use of content, however, the law is the natural starting point: all of those other forces operate in the shadow of copyright law. Copyright single-handedly creates the monopolies that underpin economic interests in this area, and it profoundly shapes norms and institutional practices concerning the use of content.

The next several subsections review and analyze exceptions to copyright that may protect uses of content for digital learning. It finds that they are

frequently narrow, cumbersome, incompatible with new technology, or vague. The penultimate subsection discusses the potential consequences for educators whose unauthorized use of content is found to fall outside of these exceptions: a potential infringement suit, steep legal fees, and substantial damages. The final subsection briefly considers different treatments of these legal issues in other selected countries outside the United States.

**• The Fair Use Doctrine**

If the educational use exceptions are excessively specific and narrow, the fair use doctrine presents exactly the opposite problem. The fair use doctrine has evolved through over a century and a half of judicial decisions as a defense to copyright liability governed by a very general set of standards. The only way to predict whether the doctrine will immunize a particular use from liability is to analogize the facts at hand to those of other cases that have come before the courts in the past. This open-ended structure gives the fair use doctrine important flexibility to deal with myriad situations left uncovered by the various particularized exceptions to infringement, such as educational use exceptions that fail to anticipate new technology. At the same time, however, this uncertainty frustrates institutional educational users who feel pressure to establish clear rules for educators, librarians, and students concerning the legal use of copyrighted works.

The essence of the current fair use doctrine dates back at least to *Folsom v. Marsh*, an 1841 decision by Justice Joseph Story. The doctrine continued to evolve for over a century. In its 1976 overhaul of the Copyright Act, Congress codified the fair use doctrine for the first time, without modifying the doctrine or removing from the judiciary the power to determine its boundaries. The current fair use provision, found in section 107 of the statute, reads:

the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include:

1. the purpose and character of the use, including whether such use is of a commercial nature or is for non profit educational purposes;
2. the nature of the copyrighted work;
3. the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
4. the effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

Since the 1976 codification, courts have continued to shape the fair use doctrine by applying its standards to particular situations. While most courts analyzing fair use review each of the four enumerated factors in reaching their decisions, these factors are not a mechanical test that can be applied with precision. The evolution of this defense is an ongoing project.

**• Statutory Damages and Legal Fees**

Even where content users have a good-faith belief that their conduct is permitted under exceptions for educational use or fair use, every such use carries at least a small risk of litigation. A successful defense still entails significant legal fees. A report by the American Intellectual Property Law Association estimates that the average cost to defend a copyright case is just under one million dollars. While some education-related cases surely would require less than this average amount, this is an especially expensive type of litigation across the board. Statutory damages, like actual damages, aim to reduce incentives to violate copyright law, making the expected cost of infringing action no less than the expected cost of obtaining authorization. However, statutory damages often explicitly and purposefully go much higher than actual damages. Under some circumstances common in educational settings, especially where a teacher draws content from multiple works, maximum statutory damages for infringements can reach extremely high levels. Nonprofit educational enterprises can seldom risk such large damages on top of substantial legal fees. In addition, a number of factors make statutory damages awards unpredictable, further complicating educational users calculus of risk.

Congress has articulated that statutory damages serve a number of purposes not served by actual damages. First, the law allows awards in excess of actual proven damages because actual damages are considered inadequate in light of the difficulty of detecting copyright violations and the burden and expense of calculating and proving actual damages. More recently, Congress has also indicated that greater damage awards may deter large-scale piracy enabled by new copying technologies.

In pertinent part, the current statute (section 504(c)(1) of the Copyright Act) reads:

The copyright owner may elect, at any time before final judgment is rendered, to recover, instead of actual damages and profits, an award of statutory damages for all infringements involved in the action, with respect to any one work in a sum of not less than $750 or more than $30,000 as the court considers just. For the purposes of this subsection, all the parts of a compilation or derivative work constitute one work.

The section further provides for the increase of the statutory maximum to up to $100,000 per infringed work if the defendant is shown to have acted willfully, or down to $200 per infringed work for innocent infringements. The law requires that

minimum damages be awarded even in cases where infringers reap no profit from their activities and cause no significant losses to the plaintiff. No absolute maximum applies other than the per-work statutory maximum. As such, an educator found to have infringed five works even innocently would be required to pay a minimum of $1000 in statutory damages, and a maximum of $250,000. Thus, even a noncommercial use of copyrighted content for educational purposes could yield a statutory damages award of tens of thousands of dollars or even more.

Of primary importance to educational users, the next portion of the provision on statutory damages, section 504(c)(2), states that a court may not award statutory damages in any case where an infringer believed and had reasonable grounds for believing that his or her use of the copyrighted work constituted a fair use, if the infringer was:

- an employee or agent of a nonprofit educational institution, library, or archives acting within the scope of his or her employment who, or such institution, library, or archives itself, which infringed by reproducing the work in copies or phonorecords; or
- a public broadcasting entity who, as a regular part of the nonprofit activities of a public broadcasting entity infringed by performing a published nondramatic literary work or by reproducing a transmission program embodying a performance of such a work.

A great number of educational users of content fall outside of these narrowly drawn categories, however, including those not affiliated with such traditional institutions, or those who used types of content not covered by the exception. (The public broadcasting provision is particularly limited, and WGBH reports that it approaches fair use with the assumption that damages could be substantial.) Additionally, proving reasonable grounds for the belief in fair use may be difficult. And, although the issue has never arisen in a reported opinion, the exception does not mention good faith belief of non-infringement under any other exceptions; educators with a good-faith belief that their activity is privileged under the classroom use exception or the TEACH Act are not necessarily protected from statutory damages in the event that their judgment is incorrect.

In addition to their possible size, several circumstances make statutory damages unpredictable as well. For one, statutory damage awards are largely shielded from appellate review. Furthermore, the Supreme Court ruled in 1998 that plaintiffs have a right to seek a jury trial on the issue of statutory damages, rather than having them set by a judge. Thus, as lay juries calculate statutory damages more often, predictability can be expected to decrease even further and there is reason to believe that juries may grant larger statutory damages awards. Finally, although some courts recognize rough rules that statutory damages should be two or three times provable actual damages, these rules diverge between courts; in any event, such unofficial benchmarks are unlikely to be included in jury instructions.

As noted above, there are virtually no precedents in which educators themselves were defendants, so it is difficult to predict whether courts would award high statutory damages in such a case. There is little question, based on statements by our workshop participants and others, that educators fear such an outcome.

Even if the actual risks of being sued and of losing are small, those risks are multiplied by the potential damages. Where the expected cost of relying unsuccessfully on legal provisions for fair use or educational use including both legal fees and damages exceeds the cost of a license, educational actors will prefer to rely upon licensing over their good faith assessments of the law. As a result, even where most observers would conclude that an educational use of content fell well within the bounds of fair use or the TEACH Act, educators may shrink from relying on their protection because of the small risk of very large statutory damages.

**Education and Copyright Law in Non-U.S. Systems**

Most of the discussion of legal issues thus far has focused on the copyright law of the United States. While various international agreements over the last half century have moved various national intellectual property laws closer to one another, there are still very significant differences between U.S. law and law in other countries. At least two differences are worthy of brief mention.

First, most other countries do not have a fair use doctrine at all. Britain and some Commonwealth countries with roots in British law embrace a related doctrine called fair dealing, but its scope is narrower than fair use. Second, a number of other nations have resisted adoption of statutes equivalent to the DMCA, and in some cases those that have enacted some form of anticircumvention legislation have included more breathing room for educational uses of content.

**India:** Dr. Mira Sundara Rajan of the University of British Columbia wrote a paper] examining the evolution of copyright law in India, which has various permissive provisions motivated in large part by India's status as a rapidly developing nation. Digital learning carries particular urgency for a country of one billion persons with a shortage of educational resources. India's copyright statute thus includes provisions for compulsory licensing and fair dealing that are more lenient towards educators than comparable aspects of U.S. law, especially when it comes to importing educational content from more industrially advanced nations. For example, detailed and powerful provisions allow for the translation of works into Indian languages that are not in general use in a developed country if no one has prepared such a translation within one year of first publication. Works to be used in systematic instructional activities can be reproduced if they are either unavailable in India or more expensive than comparable works in India. An elaborate set of fair dealing provisions for computer software allows copying of programs in order to study them. As these examples show, Indian law has allowed significant educational uses of content.

The future of this orientation in Indian law is in doubt, however. The government is currently engaged in an overhaul of the copyright statute. The U.S. and other industrialized nations are exerting pressure for India to further harmonize its law with international trends. Possible changes under review include modifying or abandoning the software fair dealing rules as well as the possible enactment of the country's first law concerning circumvention of DRM systems, comparable to the DMCA. In general, the trajectory of India's copyright law may create new obstacles to digital learning there.[5]

**Internet and Globalization**

The two key forces having a deep impact on society are uniformly recognized as being the Internet, leading to the digital revolution, and the globalization, with its deep impact on legal information. These two forces can be studied separately, but they are intrinsically interwoven into the work of law librarians and access to legal information.

The Internet and digital revolution have led both to an information overload, with information coming from many different directions, and the simultaneous increased speed of information, where almost instantaneous responses are expected from the easy flow of information. The context of legal research today presents us with an inflation of information, augmented by an inflation of legal issues. Law reflects societal concerns, and new areas of regulation have appeared, as well as new substantive law areas.

Environmental law, bio-ethics, information technology and Internet-related issues are just a few. These new areas appear in a domestic context. In addition, almost every domestic law area now has an international component.

Globalization has been defined as the process of integrating nations and peoples—politically, economically, and culturally—into a larger community. The focus is not on nations but on the entire globe.[6] This complex, controversial, and synergistic process combines technology in communications and transportation with the deregulation of markets and open borders to lead to vastly expanded flows of people, money, goods, services, and information.[7] The dark side of globalization produces economic and social dislocations and arouses public concerns over job security, concentration of economic power, harm to the environment, danger to public health and safety and the disintegration of indigenous cultures.[8] In the information field, we can also say that it has created a digital divide, between those who have access to the Internet, and those who do not the world is shrinking, and it is now difficult to distinguish between domestic and foreign and international law in a global setting. We need to look beyond national jurisdiction. New terms have been coined, such as Transnational law,[9] Global law, and there is an international element to most domestic law subjects, e.g. international trade law, the international law of human rights, environment, criminal law, etc. The law of foreign countries has to

be studied. Every important domestic subject –securities regulation, criminal law, procedure, environmental law, family law, etc.—has an international dimension. The U.S. Supreme Court has taken foreign and international law into consideration in several decisions.[10] Interestingly, comments on hot topics like the famous debate between U.S. Justices Breyer and Scalia on the use of foreign law by U.S. courts, often take the form of blogs.[11]

Globalization has permeated and deeply influenced the legal literature. There has been an explosion in the legal literature in international and foreign law, which is well documented in indexes and catalogs. I have observed it personally over the years. My career has been affected in a deep way by the many changes in the legal information environment. I did much of my professional career in legal information in the print world, and I evolved as the world of legal information started to change, first in an evolution, and now as a revolution. I started my career as a law graduate from France and the United States,[12] following studies in Germany and a university degree in German. After receiving a Master's in Law Librarianship from the University of Denver, I started my professional career at Duke Law School as a reference librarian, totally in the print world. During my time at Duke, the first word processors came into being, and the first Lexis and then Westlaw dedicated terminals were introduced into the law school. Among the new growing literature worldwide, one can note the growth of textbooks explaining U.S. law to international law students, and introductory books explaining foreign law to researchers from a different country or legal tradition.[13] There are many such titles, such as comparative law textbooks and casebooks, and many new books on specialized areas of comparative law, rather than books general in scope. A new online service, *International Law in Domestic Courts*[14] is emblematic of the transnational law trend. The publishers send out reporters in many countries of the world, who suggest cases, and write annotations on the cases selected. This service provides great empirical data on how national judges apply international law norms.

**Impact of Internet on Legal Research—A CRITICAL LOOK**

In spite of the huge technological advances, access to information is different from use as a reliable source. There are both positives and negatives. A huge amount of information is accessible, in an easy and convenient way, but it is unfiltered, and on the web currently, there is no organized control of information, it is hard to know what you are missing, and if the information you find is accurate and authoritative,[15] and the most relevant to your specific needs. Researchers want easy, convenient access to the most reliable materials that directly relate to their research interests, which is the reason library indexing and classification tools and systems have been designed in the first place, so that researchers have precision in their research. These tools are lost in full text searching.[16] Full text online searching can yield a wealth of information. Often lacking is the proper context and direction to ensure the mass of information is

highly relevant to the matter at hand. This problem can be met by resorting to web guides, or background texts online or in print, which provide analysis and summaries. In the law field in the United States, the reliance on Internet search engines has led to the loss of a lot of sophisticated indexing tools, such as subject and digest keyword indexing, the elaborate system created by West and used since the end of the 19th century.[17] Many commentators have written on comparing free text searching versus classified arrangement and indexes. In general, free-text works best for factual research, but not always with the best results. Even Lexis came out with its own headnotes and classification several years ago, after starting as a pure full text database. Also, for the general public, there are some limitations to getting the plain text of the law. How much can one understand the law by looking at a text? If no context is provided, it may be harder to understand the issues, the procedure, etc., which are provided in a commercial system such as West, with headnotes and annotations. The greatest danger is for non professionals who get the letter of the law, but not the context. The Internet makes legal information much more accessible to the public. But, it is not clear that the greater accessibility makes the law more understandable, because it may lack a context. People can misinterpret the text of the law, unless there are disclaimers. It may also put a greater burden on the legal profession to explain the law. So, what is there to do?

In evaluating a web source, the following questions need to be asked and answered with some confidence. What is the source? Is this source reliable? Is it up-todate? Is this the official, final version of a text? Can you cite this to a court?[18] For research purposes, it is important to strike a balance between electronic and print sources, and know the strengths and weaknesses of each.[19] To make some sense out of the mass of information provided on the Internet, a good way to manage legal information on the Internet is to start with reputable web sites. For the United States, here are a few good and free commercial sites: Findlaw,[20] and LexisOne,[21] are free comprehensive sites on U.S. law (respectively belonging to Westlaw and Lexis, the premium fee-based services), Law.com[22] is a leading legal news and information network for attorneys and other legal professionals. LLRX[23] is geared to legal information professionals. An efficient approach in dealing with information overload and unfiltered information while doing legal research, is to start with authoritative research guides on the web. The following have emerged as great starting points for legal research on a worldwide scope: *Law Library of Congress Guide to Law Online*,[24] and the *Global Legal Information Network* (GLIN).[25] The American Society of International Law web site has a Research part.[26] Two services of note, which annotate new web sites of interest, and classify them, are *INTUTE: Law*[27] and *InSite*.[28] An example of a collaborative search engine application is the new Cornell Law Library's new *Legal Research Engine*, which helps users find authoritative online legal research guides on every subject, by searching about twenty different web sites.[29] Finally, two general indexes with full text links, *Current Cites*,[30] and *Resourceshelf*,[31] are useful current awareness tools, as well as *First Monday*.[32]

One of the favorite tools to find books by subject or keyword, in any language, is Worldcat. It is a wide ranging union catalog, and, since the summer of 2006, it became available for free searching by anyone. Its combined holdings of thousands of libraries worldwide make it particularly valuable. It includes all 70-plus million records in the database, with an easy-to-use interface.[33] So, if you want to find books in English on French Law starting with the most recent ones, you can limit your search by language and date.

**New Roles for Librarians in the Digital Age**

In this rapidly evolving technological environment, and in the face of constant change, what are the new roles for librarians? Technology does not replace human expertise, and law librarians are called upon to provide guidance in a pro active way, reaching out to their audience, since the audience may not go to them. The focus here is on law librarians, not libraries. But a few thoughts are in order first on the future of law libraries. Even though their demise has been proclaimed many times, it may be based on the erroneous assumption that libraries are warehouses of books. Libraries are physical buildings that house library materials, but they do so in an organized fashion, and providing classified access to library materials. 92 A library in its fullest sense is more than a building, it is a place where people are served and where people are not only encouraged to interact with the information they are seeking, but are helped and guided in their research. 93 How then will law librarians cope with the information overflow and provide guidance in a way that meets the needs of researchers, whether they come to the physical library, or directly through the library web site, or other distant technologies?

New roles emerge for librarians who are needed to evaluate the quality of information; teach legal research methodology; and be seen as core participants in the mission of their institutions. This is a tall order, because at the same time they need to keep up with the breakneck pace of technology, and adjust to the new information seeking and usage behaviors of students, faculty, judges and lawyers.

**Conclusion And Suggestions**

Information reliability, authenticity, precision, relevance, accuracy, version control. The challenges posed by digital libraries are many. The long term consequences of the digital world are unknown. There is so much information available, but without any context, which raises educational issues. In the law field, it is not only a matter of digital competence, but also of legal consequence . Some as yet unanswered questions are whose responsibility is it to train the public, and whether there will a growing demand.

The recent development in the U.S., to add a legal research test on the bar exam, is of interest to the whole world, because it signifies the importance of a sound legal research training to the competent practice of law. It is an amazing

time to be a law librarian, and an information specialist. It is also an amazing time to be able to connect with so many colleagues from all over the world, and help one another. It makes us stronger as a profession, and more effective in communicating our value to the decision-makers in our institutions.[34] What greater pleasure than to share what we know to foster knowledge and scholarship, and be both a great fan of innovation, and a guardian of digital records for the long term future. It is possible to embrace the information revolution, while keeping the tradition of service and quality of information that has been the trademark of libraries.

At a time when researchers are still sorting out the complex relationship between adolescents and the mass media, the entire nature of the media system is undergoing dramatic change. The explosive growth of the Internet is ushering in a new digital media culture. Youth are embracing the new technologies much more rapidly than adults. In addition, because of their increased spending power, youth have become a valuable target market for advertisers. These trends have spurred the proliferation of Web sites and other forms of new-media content specifically designed for teens and children. The burgeoning digital marketplace has spawned a new generation of market research companies, and market research on children and youth is outpacing academic research on youth and the newer media. The emergence of this new media culture holds both promise and peril for youth. Whether the positive or negative vision of the digital future prevails will be determined, in large part, by decisions being made now and in the next few years in the halls of government and in corporate boardrooms. Research has contributed to the resolutions of several recent legislative and policy decisions in areas including television violence and the V-chip, children's educational television programming, and privacy and marketing to children on the Web. Future research needs to be designed with the public policy agenda in mind. The academic community has much to contribute to the debates over new developments in the digital age.

**Endnotes**

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# LEGAL EDUCATION IN DIGITAL AGE: AN ANALYSIS

**Dr. Rupam Jagota**
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**Introduction**

Legal Education is a branch of knowledge which cannot be compartmentalized as subjects are human beings with functional brains and not static machines .In the globalized digital age of today where press of a button adjusted to codes can alter the course of action, legal education has to address the multifaceted growth of law. It has to equip the budding lawyers with the clinical digital techniques in contrast to traditional deliverance. The future age is an electronic era and law has to be updated to handle the challenges as well as new laws have to be drafted to find procedural and investigative tools to educate them to find solutions in the jurisprudence sea of legal education . A lawyer with a multi-disciplined, multi- purpose education would be able to contribute to national development and social changes in a constructive way.

The **Computer Age** or **Digital Age**, is an idea that the current age will be characterized by the ability of individuals to transfer information freely, and to have instant access to knowledge that would have been impossible earlier.

The research paper focuses on the fact, whether the positive or negative vision of the digital future prevails will be determined, by current decisions and those made in the next few years in the halls of government and in corporate boardrooms. Research has contributed to the resolutions of several recent legislative and policy decisions in view of the increased invasion of technology & net over the print version. Future research needs to be designed with the public policy agenda in mind. The academic community has much to contribute to the debates over new developments in the digital age resulting in the emergence of cyber laws in combination and addition to earlier codified laws .The paper analyses the factors, reasons & problems related to jurisdiction in cyber crimes, fixing of liability to impose penalty and punishment, the investigative and procedural difficulties in handling and procuring evidence which is narrow, cumbersome, incompatible with new technology. Whether that role is ultimately fulfilled will depend on fresh, creative thinking and a firm commitment to move teaching, learning, and the university into the digital age.

Today's digital kids think of information and communications technology as something akin to oxygen: they expect it, it's what they breathe, and it's how

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they live. The researcher has enumerated few suggestions to address the evolving global phase of legal education in the digital era. Universities could shape online activities into socially contextualized learning environments in which students actively engage in the construction of their learning experience and immediately use their course content. An open, persistent system not bound by semesters or strict discipline borders could allow students to develop over time and track that development along several paths. This system could form the basis of a liberal education grounded in practice.

Education is moving into the digital age. Pedagogies have changed to engage the latest digital technologies. The methods of distribution are now a blend between face-to-face and some other combination of virtual interfaces. The content is moving from traditional text-based learning to text-plus-multimedia. The community is now involved in the development of content.The world of education is still in transition; the move to an all-digital environment will not be completed for some time to come. The cost of creating high-end multimedia content, although coming down, is still prohibitive for all but the very edge of the marketplace.

The digital age has brought profound change to academic law libraries. Numerous outside entities with which we work - accrediting agencies, publishers, other libraries, library organizations and consortia, information technology departments on campus and in legal education, to name a few - are also dealing with, and reacting to, the impact of digital technology from their perspectives. Academic law libraries cannot operate in a vacuum in responding to change, particularly if we want to master the future we envision rather than drift towards a future with no controls. Collaborations with these external entities, whose response to the digital challenge will greatly impact our futures, will enable us to influence their direction and achieve outcomes that best serve the academic law library and its place in legal education.The importance and necessity of these collaborations, therefore, prompt this scenario of the future.[1]

Digital technology revolutionizes many of the ways we receive and use information every day. The availability of online resources has changed everything from hunting for a new house to reading the newspaper to purchasing plane tickets, and as a result has disrupted established structures (such as the real estate, news, and airline businesses). Telecommuting has become widespread. The market for popular music has transformed dramatically. Internet telephony presents a real challenge to established telecommunications companies. Millions of blogs, social networking sites, and interactive online games have created new modes for interaction and expression. In short, the advent of digital technology touches almost every aspect of modern life.[2] Perhaps no area holds more potential for such transformation than education. Many diverse and exciting initiatives demonstrate how rich sources of digital information could enhance the transfer of knowledge. Yet at the same time, the change in education arguably has been less radical, especially in

comparison to mundane endeavours such as selling a used bicycle or booking hotel rooms. There are many complex reasons for this slow pace of change, including lack of resources and resistance to new practices. As this white paper explains, however, among the most important obstacles to realizing the potential of digital technology in education are provisions of copyright law concerning the educational use of content, as well as the business and institutional structures shaped by that law.

Digital technology makes informative content easier to find, to access, to manipulate and remix, and to disseminate. All of these steps are central to teaching, scholarship, and study. Together, they constitute a dynamic process of digital learning.

As per ITAA 2008, Section 73 is given as follows:

[Section 73] Penalty for publishing electronic Signature Certificate false in certain particulars:

(1) No person shall publish a Electronic Signature Certificate or otherwise make it available to any other person with the knowledge that:

   (a) the Certifying Authority listed in the certificate has not issued it; or

   (b) the subscriber listed in the certificate has not accepted it; or

   (c) the certificate has been revoked or suspended, unless such publication is for the purpose of verifying a digital signature created prior to such suspension or revocation

(2) Any person who contravenes the provisions of sub-section (1) shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both.[3]

**Meaning**

The **Information Age**, also commonly known as the **Computer Age** or **Digital Age**, is an idea that the current age will be characterized by the ability of individuals to transfer information freely, and to have instant access to knowledge that would have been difficult or impossible to find previously. The idea is linked to the concept of a digital age or digital revolution, and carries the ramifications of a shift from traditional industry that the industrial revolution brought through industrialization, to an economy based on the manipulation of information, i.e., an information society.

The Information Age formed by capitalizing on the computer microminiaturization advances, with a transition spanning from the advent of the personal computer in the late 1970s to the internet's reaching a critical mass in the

early 1990s, and the adoption of such technology by the public in the two decades after 1990. Bringing about a fast evolution of technology in daily life, as well as of educational life style, the Information Age has allowed rapid global communications and networking to shape modern society. The digital age is started in second millenium, and it means that every company, shop, or bar, have at least one computer. When we say, this is age of...,first we think, theology of that age. Digital age is started,(digital photos, digital computers, digital books, digital airplanes...). The schools have digital structures,(on knowledge I mean), and we do not writing just on paper, we can write on computer, phones, PDA, or something like that. A new generations of cars have auto-control, when you are sleepy.

**The Impact On Jobs And Income Distribution**

The Information Age has impacted the workforce in several ways. First, it has created a situation in which workers who perform tasks which are easily automated are being forced to find work which involves tasks that are not easily automated. Second, workers are being forced to compete in a global job market. Lastly workers are being replaced by computers that can do the job more effectively and faster. This creates problems for workers in industrial societies. Jobs traditionally associated with the middle class (assembly line workers, data processors, foremen, and supervisors) are beginning to disappear, either through outsourcing or automation. Individuals who lose their jobs must either move up, joining a group of "mind workers" (engineers, attorneys, scientists, professors, executives, journalists, consultants), or settle for low-skill, low-wage service jobs.

The "mind workers" form about 20% of the workforce. They are able to compete successfully in the world market and command high wages. Conversely, production workers and service workers in industrialized nations are unable to compete with workers in developing countries and either lose their jobs through outsourcing or are forced to accept wage cuts. In addition, the internet makes it possible for workers in developing countries to provide in-person services and compete directly with their counterparts in other nations.

This has had several major consequences:

Growing income inequality in industrial countries

The polarization of jobs into relatively high-skill, high wage jobs and low-skill, low-wage jobs has led to a growing disparity between incomes of the rich and poor. The United States seems to have been more impacted than most countries; income inequality started to rise in the late 1970,'s, however the rate of increase rose sharply in the 21st century. Income inequality in the United States has now reached a level comparable to that found in South America.[4]

**Teaching and learning in traditional schools,** from kindergarten to graduate school, benefits from digital technology that enables new pedagogical methods and allows easy access to vast quantities of educational content. Examples of changes that capitalize on this potential include:

- A planned online network for high school history teachers, allowing them to share advice and classroom resources
- Classroom teaching enhanced with new media such as PowerPoint slides or video and audio clips
- Extension of the classroom dialogue through mechanisms such as e-mail or class blogs and wikis;
- Student authorship of diverse content beyond the traditional term paper and diorama, from video and audio to hyperlinked web pages.

**The Digital Millennium Copyright Act**

A further addition to rights holders arsenal is the ability to use technological mechanisms to prevent unauthorized copying of works. Such mechanisms are most widely known as Digital Rights Management systems though they are also sometimes called Technological Protection Measures or copy prevention technology. By whatever name, DRM systems are encoded into digital content by a variety of means, such as encryption or watermarking, so that users are incapable of accessing or using the content in a manner that the rights holder wishes to prevent. Sometimes, as in the case with most commercially distributed DVDs, the DRM system simply aims to prevent all copying indiscriminately.

Copyright law reinforces the power of DRM systems through the Digital Millennium Copyright Act, found in chapter 12 of the statute. In general, the DMCA seeks to forbid the circumvention of a DRM system defined as a technological measure that effectively controls access to a work protected by copyright law. It also outlaws development or trafficking of any DRM circumvention device or technology.

There are very limited exceptions to liability under the DMCA, but notably they do not include any defense based on an assertion of applicable exceptions under copyright law, such as fair use. Defendants who have a fair use right to reproduce content do not thereby have a defense if they must circumvent a DRM system to gain access to that content. There is also an exemption from civil damages for certain defined educational institutions under section 1203(c)(5), but it is available only if the defendant accused of circumvention sustains the burden of proving, and the court finds, that the library, archives, educational institution, or public broadcasting entity was not aware and had no reason to believe that its acts constituted a violation.It would be extremely difficult for any responsible educational institution to demonstrate such ignorance of a well-known legal restriction, and individuals are not eligible for the same lenience.Consequently, educators are potentially vulnerable to civil or even criminal penalties if they interfere with whatever technological restrictions rightsholders choose to impose on the use of content.

**DVDs in Film Studies Classes**

A recent addition to the academy, film studies applies the techniques of established disciplines, including psychoanalysis, literary studies, and linguistics, to examine the art of cinema. Though a small group of intellectuals recognized the significance of film as a medium for artistic expression in the early twentieth century, film studies did not surface as an accepted area of scholarship until the 1960s. In the decades since, the popularity of film studies has spread dramatically, so that dozens of colleges and universities now offer undergraduate and graduate degree programs in film studies, and many more offer courses in the field. Technological advancement, including development of the DVD, has fueled this growth. And with the emergence of cinema as a crucial element of modern culture, film studies is certain to continue to develop as an important area of scholarly endeavor.

The ability of teachers and students to view and critique excerpts of film essentially, movie clips is a fundamental building block of serious study in this area. One of the most common means for professors to teach students about film is to show a series of excerpts from different movies that illustrate a common point. For example, a professor may wish to screen clips from different films that use a certain camera angle to produce a particular visual effect. Film studies professors also present and discuss relevant clips from assigned works during lecture, just as literature professors examine novels in class by reading important passages out loud.

Creating compilations of such excerpts (or, as they are sometimes called in a throwback to older technology, clip reels should be a relatively straightforward process using DVDs. Digital technology should also enhance the ability for students to have access to clips for homework or other study outside of class, either online or through distributed DVDs. In fact, our research and interviews with film studies professors demonstrates that, for a combination of technological and legal reasons, the opposite has occurred. The DRM systems used on DVDs, and the restrictions of the DMCA, interfere with these educational uses of film content. We have found that many film studies professors nonetheless reap the benefits of digital technology for their teaching but only by bypassing DRM systems in likely violation of copyright law.

Rightsholders almost always distribute film content on DVDs with DRM systems and a number of other technological limitations embedded in the discs. These technological barriers are reinforced by legal ones. As discussed above in section 1.2.3, the DMCA outlaws circumvention of DRM systems and the creation or distribution of circumvention tools. Even though showing a clip of a movie in class is unquestionably permissible, under both face-to-face teaching exceptions (see section 3.1.1) and the fair use defense (see section 3.2), the DMCA does not recognize any comparable exceptions. Professors who circumvent the DRM systems in DVDs to enable such uses thereby expose themselves to civil or even criminal penalties.

The most significant DRM barrier is CSS. Commercially available DVDs are encoded in CSS, an encryption and authentication scheme that prevents copying of video files directly from DVDs. CSS does not merely block DVD copying. Rather, CSS is an encryption system that scrambles DVD content and restricts playback to licensed devices equipped with keys for decoding the scrambled content. This encryption, combined with the terms of the CSS license, prevents copying by regulating the devices that play DVDs. Put differently, CSS restricts *access* to DVDs as well as duplication of them.

Clips taken from videotape or other analog formats are not adequate substitutes for the educational needs of these professors. Most obviously, the resultant copies are lower in quality than the originals (which most likely were already inferior to DVDs of the same film). A sophisticated analysis of cinema requires access to a version of the film in excellent quality, not the grainy images found on bootleg videos. Tape also must be copied in real time, making the creation of larger clip reels unrealistic. Finally, some analog formats do not lend themselves to creation of clip compilations whatsoever. For example, most professors do not have access to the equipment necessary to duplicate and splice clips from 16-mm film.

As a supplement to presenting segments of works in class, film studies professors occasionally distribute excerpts of works to students as part of the course curriculum either by handing out physical copies, or by posting content on an intranet.Professors who wish to distribute movie clips online encounter issues similar to those faced when distributing physical copies of content. Posting analog content to the internet (or an on-campus intranet) is a costly and time-consuming proposal, since it is necessary to digitize analog content before putting it online. This conversion reduces the quality of formats such as 16-mm film, since some resolution is lost during digitization. Clips from DVDs, in contrast, are easily compiled and posted to with the use of software tools such as Fast DVD Copy 4 and Cinematize. Unsurprisingly, the majority of film studies professors who post content online derive that content from DVDs.

**Obstacles To Digital Learning**

**• Uncertain or Unfavourable Copyright Law**

Lawyers tend to look first to legal regimes when surveying the landscape of a public policy issue. At times, this is the wrong place to begin, because economic or social forces play a greater role in shaping practices. In studying educational use of content, however, the law is the natural starting point: all of those other forces operate in the shadow of copyright law. Copyright single-handedly creates the monopolies that underpin economic interests in this area, and it profoundly shapes norms and institutional practices concerning the use of content.

The next several subsections review and analyze exceptions to copyright that may protect uses of content for digital learning. It finds that they are

frequently narrow, cumbersome, incompatible with new technology, or vague. The penultimate subsection discusses the potential consequences for educators whose unauthorized use of content is found to fall outside of these exceptions: a potential infringement suit, steep legal fees, and substantial damages. The final subsection briefly considers different treatments of these legal issues in other selected countries outside the United States.

**• The Fair Use Doctrine**

If the educational use exceptions are excessively specific and narrow, the fair use doctrine presents exactly the opposite problem. The fair use doctrine has evolved through over a century and a half of judicial decisions as a defense to copyright liability governed by a very general set of standards. The only way to predict whether the doctrine will immunize a particular use from liability is to analogize the facts at hand to those of other cases that have come before the courts in the past. This open-ended structure gives the fair use doctrine important flexibility to deal with myriad situations left uncovered by the various particularized exceptions to infringement, such as educational use exceptions that fail to anticipate new technology. At the same time, however, this uncertainty frustrates institutional educational users who feel pressure to establish clear rules for educators, librarians, and students concerning the legal use of copyrighted works.

The essence of the current fair use doctrine dates back at least to *Folsom v. Marsh*, an 1841 decision by Justice Joseph Story. The doctrine continued to evolve for over a century. In its 1976 overhaul of the Copyright Act, Congress codified the fair use doctrine for the first time, without modifying the doctrine or removing from the judiciary the power to determine its boundaries. The current fair use provision, found in section 107 of the statute, reads:

the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include:

1. the purpose and character of the use, including whether such use is of a commercial nature or is for non profit educational purposes;
2. the nature of the copyrighted work;
3. the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
4. the effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

Since the 1976 codification, courts have continued to shape the fair use doctrine by applying its standards to particular situations. While most courts analyzing fair use review each of the four enumerated factors in reaching their decisions, these factors are not a mechanical test that can be applied with precision. The evolution of this defense is an ongoing project.

**• Statutory Damages and Legal Fees**

Even where content users have a good-faith belief that their conduct is permitted under exceptions for educational use or fair use, every such use carries at least a small risk of litigation. A successful defense still entails significant legal fees. A report by the American Intellectual Property Law Association estimates that the average cost to defend a copyright case is just under one million dollars. While some education-related cases surely would require less than this average amount, this is an especially expensive type of litigation across the board. Statutory damages, like actual damages, aim to reduce incentives to violate copyright law, making the expected cost of infringing action no less than the expected cost of obtaining authorization. However, statutory damages often explicitly and purposefully go much higher than actual damages. Under some circumstances common in educational settings, especially where a teacher draws content from multiple works, maximum statutory damages for infringements can reach extremely high levels. Nonprofit educational enterprises can seldom risk such large damages on top of substantial legal fees. In addition, a number of factors make statutory damages awards unpredictable, further complicating educational users calculus of risk.

Congress has articulated that statutory damages serve a number of purposes not served by actual damages. First, the law allows awards in excess of actual proven damages because actual damages are considered inadequate in light of the difficulty of detecting copyright violations and the burden and expense of calculating and proving actual damages. More recently, Congress has also indicated that greater damage awards may deter large-scale piracy enabled by new copying technologies.

In pertinent part, the current statute (section 504(c)(1) of the Copyright Act) reads:

The copyright owner may elect, at any time before final judgment is rendered, to recover, instead of actual damages and profits, an award of statutory damages for all infringements involved in the action, with respect to any one work in a sum of not less than $750 or more than $30,000 as the court considers just. For the purposes of this subsection, all the parts of a compilation or derivative work constitute one work.

The section further provides for the increase of the statutory maximum to up to $100,000 per infringed work if the defendant is shown to have acted willfully, or down to $200 per infringed work for innocent infringements. The law requires that

minimum damages be awarded even in cases where infringers reap no profit from their activities and cause no significant losses to the plaintiff. No absolute maximum applies other than the per-work statutory maximum. As such, an educator found to have infringed five works even innocently would be required to pay a minimum of $1000 in statutory damages, and a maximum of $250,000. Thus, even a noncommercial use of copyrighted content for educational purposes could yield a statutory damages award of tens of thousands of dollars or even more.

Of primary importance to educational users, the next portion of the provision on statutory damages, section 504(c)(2), states that a court may not award statutory damages in any case where an infringer believed and had reasonable grounds for believing that his or her use of the copyrighted work constituted a fair use, if the infringer was:

- an employee or agent of a nonprofit educational institution, library, or archives acting within the scope of his or her employment who, or such institution, library, or archives itself, which infringed by reproducing the work in copies or phonorecords; or
- a public broadcasting entity who, as a regular part of the nonprofit activities of a public broadcasting entity infringed by performing a published nondramatic literary work or by reproducing a transmission program embodying a performance of such a work.

A great number of educational users of content fall outside of these narrowly drawn categories, however, including those not affiliated with such traditional institutions, or those who used types of content not covered by the exception. (The public broadcasting provision is particularly limited, and WGBH reports that it approaches fair use with the assumption that damages could be substantial.) Additionally, proving reasonable grounds for the belief in fair use may be difficult. And, although the issue has never arisen in a reported opinion, the exception does not mention good faith belief of non-infringement under any other exceptions; educators with a good-faith belief that their activity is privileged under the classroom use exception or the TEACH Act are not necessarily protected from statutory damages in the event that their judgment is incorrect.

In addition to their possible size, several circumstances make statutory damages unpredictable as well. For one, statutory damage awards are largely shielded from appellate review. Furthermore, the Supreme Court ruled in 1998 that plaintiffs have a right to seek a jury trial on the issue of statutory damages, rather than having them set by a judge. Thus, as lay juries calculate statutory damages more often, predictability can be expected to decrease even further and there is reason to believe that juries may grant larger statutory damages awards. Finally, although some courts recognize rough rules that statutory damages should be two or three times provable actual damages, these rules diverge between courts; in any event, such unofficial benchmarks are unlikely to be included in jury instructions.

As noted above, there are virtually no precedents in which educators themselves were defendants, so it is difficult to predict whether courts would award high statutory damages in such a case. There is little question, based on statements by our workshop participants and others, that educators fear such an outcome.

Even if the actual risks of being sued and of losing are small, those risks are multiplied by the potential damages. Where the expected cost of relying unsuccessfully on legal provisions for fair use or educational use including both legal fees and damages exceeds the cost of a license, educational actors will prefer to rely upon licensing over their good faith assessments of the law. As a result, even where most observers would conclude that an educational use of content fell well within the bounds of fair use or the TEACH Act, educators may shrink from relying on their protection because of the small risk of very large statutory damages.

**Education and Copyright Law in Non-U.S. Systems**

Most of the discussion of legal issues thus far has focused on the copyright law of the United States. While various international agreements over the last half century have moved various national intellectual property laws closer to one another, there are still very significant differences between U.S. law and law in other countries. At least two differences are worthy of brief mention.

First, most other countries do not have a fair use doctrine at all. Britain and some Commonwealth countries with roots in British law embrace a related doctrine called fair dealing, but its scope is narrower than fair use. Second, a number of other nations have resisted adoption of statutes equivalent to the DMCA, and in some cases those that have enacted some form of anticircumvention legislation have included more breathing room for educational uses of content.

**India:** Dr. Mira Sundara Rajan of the University of British Columbia wrote a paper] examining the evolution of copyright law in India, which has various permissive provisions motivated in large part by India's status as a rapidly developing nation. Digital learning carries particular urgency for a country of one billion persons with a shortage of educational resources. India's copyright statute thus includes provisions for compulsory licensing and fair dealing that are more lenient towards educators than comparable aspects of U.S. law, especially when it comes to importing educational content from more industrially advanced nations. For example, detailed and powerful provisions allow for the translation of works into Indian languages that are not in general use in a developed country if no one has prepared such a translation within one year of first publication. Works to be used in systematic instructional activities can be reproduced if they are either unavailable in India or more expensive than comparable works in India. An elaborate set of fair dealing provisions for computer software allows copying of programs in order to study them. As these examples show, Indian law has allowed significant educational uses of content.

The future of this orientation in Indian law is in doubt, however. The government is currently engaged in an overhaul of the copyright statute. The U.S. and other industrialized nations are exerting pressure for India to further harmonize its law with international trends. Possible changes under review include modifying or abandoning the software fair dealing rules as well as the possible enactment of the country's first law concerning circumvention of DRM systems, comparable to the DMCA. In general, the trajectory of India's copyright law may create new obstacles to digital learning there.[5]

**Internet and Globalization**

The two key forces having a deep impact on society are uniformly recognized as being the Internet, leading to the digital revolution, and the globalization, with its deep impact on legal information. These two forces can be studied separately, but they are intrinsically interwoven into the work of law librarians and access to legal information.

The Internet and digital revolution have led both to an information overload, with information coming from many different directions, and the simultaneous increased speed of information, where almost instantaneous responses are expected from the easy flow of information. The context of legal research today presents us with an inflation of information, augmented by an inflation of legal issues. Law reflects societal concerns, and new areas of regulation have appeared, as well as new substantive law areas.

Environmental law, bio-ethics, information technology and Internet-related issues are just a few. These new areas appear in a domestic context. In addition, almost every domestic law area now has an international component.

Globalization has been defined as the process of integrating nations and peoples—politically, economically, and culturally—into a larger community. The focus is not on nations but on the entire globe.[6] This complex, controversial, and synergistic process combines technology in communications and transportation with the deregulation of markets and open borders to lead to vastly expanded flows of people, money, goods, services, and information.[7] The dark side of globalization produces economic and social dislocations and arouses public concerns over job security, concentration of economic power, harm to the environment, danger to public health and safety and the disintegration of indigenous cultures.[8] In the information field, we can also say that it has created a digital divide, between those who have access to the Internet, and those who do not the world is shrinking, and it is now difficult to distinguish between domestic and foreign and international law in a global setting. We need to look beyond national jurisdiction. New terms have been coined, such as Transnational law,[9] Global law, and there is an international element to most domestic law subjects, e.g. international trade law, the international law of human rights, environment, criminal law, etc. The law of foreign countries has to

be studied. Every important domestic subject –securities regulation, criminal law, procedure, environmental law, family law, etc.—has an international dimension. The U.S. Supreme Court has taken foreign and international law into consideration in several decisions.[10] Interestingly, comments on hot topics like the famous debate between U.S. Justices Breyer and Scalia on the use of foreign law by U.S. courts, often take the form of blogs.[11]

Globalization has permeated and deeply influenced the legal literature. There has been an explosion in the legal literature in international and foreign law, which is well documented in indexes and catalogs. I have observed it personally over the years. My career has been affected in a deep way by the many changes in the legal information environment. I did much of my professional career in legal information in the print world, and I evolved as the world of legal information started to change, first in an evolution, and now as a revolution. I started my career as a law graduate from France and the United States,[12] following studies in Germany and a university degree in German. After receiving a Master's in Law Librarianship from the University of Denver, I started my professional career at Duke Law School as a reference librarian, totally in the print world. During my time at Duke, the first word processors came into being, and the first Lexis and then Westlaw dedicated terminals were introduced into the law school. Among the new growing literature worldwide, one can note the growth of textbooks explaining U.S. law to international law students, and introductory books explaining foreign law to researchers from a different country or legal tradition.[13] There are many such titles, such as comparative law textbooks and casebooks, and many new books on specialized areas of comparative law, rather than books general in scope. A new online service, *International Law in Domestic Courts*[14] is emblematic of the transnational law trend. The publishers send out reporters in many countries of the world, who suggest cases, and write annotations on the cases selected. This service provides great empirical data on how national judges apply international law norms.

**Impact of Internet on Legal Research—A CRITICAL LOOK**

In spite of the huge technological advances, access to information is different from use as a reliable source. There are both positives and negatives. A huge amount of information is accessible, in an easy and convenient way, but it is unfiltered, and on the web currently, there is no organized control of information, it is hard to know what you are missing, and if the information you find is accurate and authoritative,[15] and the most relevant to your specific needs. Researchers want easy, convenient access to the most reliable materials that directly relate to their research interests, which is the reason library indexing and classification tools and systems have been designed in the first place, so that researchers have precision in their research. These tools are lost in full text searching.[16] Full text online searching can yield a wealth of information. Often lacking is the proper context and direction to ensure the mass of information is

highly relevant to the matter at hand. This problem can be met by resorting to web guides, or background texts online or in print, which provide analysis and summaries. In the law field in the United States, the reliance on Internet search engines has led to the loss of a lot of sophisticated indexing tools, such as subject and digest keyword indexing, the elaborate system created by West and used since the end of the 19th century.[17] Many commentators have written on comparing free text searching versus classified arrangement and indexes. In general, free-text works best for factual research, but not always with the best results. Even Lexis came out with its own headnotes and classification several years ago, after starting as a pure full text database. Also, for the general public, there are some limitations to getting the plain text of the law. How much can one understand the law by looking at a text? If no context is provided, it may be harder to understand the issues, the procedure, etc., which are provided in a commercial system such as West, with headnotes and annotations. The greatest danger is for non professionals who get the letter of the law, but not the context. The Internet makes legal information much more accessible to the public. But, it is not clear that the greater accessibility makes the law more understandable, because it may lack a context. People can misinterpret the text of the law, unless there are disclaimers. It may also put a greater burden on the legal profession to explain the law. So, what is there to do?

In evaluating a web source, the following questions need to be asked and answered with some confidence. What is the source? Is this source reliable? Is it up-todate? Is this the official, final version of a text? Can you cite this to a court?[18] For research purposes, it is important to strike a balance between electronic and print sources, and know the strengths and weaknesses of each.[19] To make some sense out of the mass of information provided on the Internet, a good way to manage legal information on the Internet is to start with reputable web sites. For the United States, here are a few good and free commercial sites: Findlaw,[20] and LexisOne,[21] are free comprehensive sites on U.S. law (respectively belonging to Westlaw and Lexis, the premium fee-based services), Law.com[22] is a leading legal news and information network for attorneys and other legal professionals. LLRX[23] is geared to legal information professionals. An efficient approach in dealing with information overload and unfiltered information while doing legal research, is to start with authoritative research guides on the web. The following have emerged as great starting points for legal research on a worldwide scope: *Law Library of Congress Guide to Law Online*,[24] and the *Global Legal Information Network* (GLIN).[25] The American Society of International Law web site has a Research part.[26] Two services of note, which annotate new web sites of interest, and classify them, are *INTUTE: Law*[27] and *InSite*.[28] An example of a collaborative search engine application is the new Cornell Law Library's new *Legal Research Engine*, which helps users find authoritative online legal research guides on every subject, by searching about twenty different web sites.[29] Finally, two general indexes with full text links, *Current Cites*,[30] and *Resourceshelf*,[31] are useful current awareness tools, as well as *First Monday*.[32]

One of the favorite tools to find books by subject or keyword, in any language, is Worldcat. It is a wide ranging union catalog, and, since the summer of 2006, it became available for free searching by anyone. Its combined holdings of thousands of libraries worldwide make it particularly valuable. It includes all 70-plus million records in the database, with an easy-to-use interface.[33] So, if you want to find books in English on French Law starting with the most recent ones, you can limit your search by language and date.

**New Roles for Librarians in the Digital Age**

In this rapidly evolving technological environment, and in the face of constant change, what are the new roles for librarians? Technology does not replace human expertise, and law librarians are called upon to provide guidance in a pro active way, reaching out to their audience, since the audience may not go to them. The focus here is on law librarians, not libraries. But a few thoughts are in order first on the future of law libraries. Even though their demise has been proclaimed many times, it may be based on the erroneous assumption that libraries are warehouses of books. Libraries are physical buildings that house library materials, but they do so in an organized fashion, and providing classified access to library materials. 92 A library in its fullest sense is more than a building, it is a place where people are served and where people are not only encouraged to interact with the information they are seeking, but are helped and guided in their research. 93 How then will law librarians cope with the information overflow and provide guidance in a way that meets the needs of researchers, whether they come to the physical library, or directly through the library web site, or other distant technologies?

New roles emerge for librarians who are needed to evaluate the quality of information; teach legal research methodology; and be seen as core participants in the mission of their institutions. This is a tall order, because at the same time they need to keep up with the breakneck pace of technology, and adjust to the new information seeking and usage behaviors of students, faculty, judges and lawyers.

**Conclusion And Suggestions**

Information reliability, authenticity, precision, relevance, accuracy, version control. The challenges posed by digital libraries are many. The long term consequences of the digital world are unknown. There is so much information available, but without any context, which raises educational issues. In the law field, it is not only a matter of digital competence, but also of legal consequence . Some as yet unanswered questions are whose responsibility is it to train the public, and whether there will a growing demand.

The recent development in the U.S., to add a legal research test on the bar exam, is of interest to the whole world, because it signifies the importance of a sound legal research training to the competent practice of law. It is an amazing

time to be a law librarian, and an information specialist. It is also an amazing time to be able to connect with so many colleagues from all over the world, and help one another. It makes us stronger as a profession, and more effective in communicating our value to the decision-makers in our institutions.[34] What greater pleasure than to share what we know to foster knowledge and scholarship, and be both a great fan of innovation, and a guardian of digital records for the long term future. It is possible to embrace the information revolution, while keeping the tradition of service and quality of information that has been the trademark of libraries.

At a time when researchers are still sorting out the complex relationship between adolescents and the mass media, the entire nature of the media system is undergoing dramatic change. The explosive growth of the Internet is ushering in a new digital media culture. Youth are embracing the new technologies much more rapidly than adults. In addition, because of their increased spending power, youth have become a valuable target market for advertisers. These trends have spurred the proliferation of Web sites and other forms of new-media content specifically designed for teens and children. The burgeoning digital marketplace has spawned a new generation of market research companies, and market research on children and youth is outpacing academic research on youth and the newer media. The emergence of this new media culture holds both promise and peril for youth. Whether the positive or negative vision of the digital future prevails will be determined, in large part, by decisions being made now and in the next few years in the halls of government and in corporate boardrooms. Research has contributed to the resolutions of several recent legislative and policy decisions in areas including television violence and the V-chip, children's educational television programming, and privacy and marketing to children on the Web. Future research needs to be designed with the public policy agenda in mind. The academic community has much to contribute to the debates over new developments in the digital age.

**Endnotes**

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# CONTENT ANALYSIS TECHNIQUE IN LEGAL RESEARCH—A CRITIQUE

**Dr. R. Srinivasan***

## I. Introduction

Content Analysis is a scientific study of the information and communication. It reveals the intention of the communicator, circumstances of the communication and the purpose of the communication. It is a standard application of research method in all social sciences. In the legal research method content analysis employs empirical study to learn the legal doctrines through different lenses. In pursuing this work the research scholars step into the shoes of social scientists and collect various set of documents including judicial opinions on particular subject and reading it consistently and systematically.

According to Professor Herman Oliphant in his inaugural address as President of the American Association of Law Schools in 1928 he observed that "Our case material is a gold mine for scientific work. It has not been scientifically exploited … We should critically examine all the methods now used in any of the social sciences and having any useful degree of objectivity."[1] In this research paper an attempt is made to analyze that how the social science standard technique of content analysis form the basis for an empirical methodology on legal research.

## II. Epistemology

Historically, Content analysis was a time consuming process. It was done manually or slow. The mainframe computers were used to analyze punch cards containing data punched in by human coders. Single studies could employ thousands of these cards. Human error and time constraints made this method impractical for large texts. However, despite its impracticality, content analysis was already an often utilized research method by the 1940's. Initially the studies limited to examine texts of the frequency of the occurrence of identified terms. But in the mid 1950's researchers were already starting to consider the need for more sophisticated methods of analysis, focusing on concepts rather than simply words and on semantic relationships rather than just presence. Now it was widely relied in the field of sociology, political science and communication field. Recently it also relied in the field of legal research and applied to texts of legal documents such as trial court records, statutes and regulations.[2] In the later 1950s some lawyers and scholars began to develop spontaneously a self taught method that could be labeled content analysis. The Content analysis has three different components: a. systematic selection of cases; b. coding cases; c. analyzing the coding cases.[3]

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**III. Definitions**

In the 'Content Analysis' the word '*Content*' denotes what is contained and '*Analysis*' means what is contained in a information or communication. Broadly speaking that the word content analysis is a method where the content of the message forms the basis for drawing inferences and conclusions about the content. In this there are various definitions of content analysis are available.

According to *Kaplan* the Content Analysis means "any technique for the classification of the sign-vehicles which relies solely upon the judgements of an analyst or group of analyses as to which sign-vehicles fall into which categories on the basis of explicitly formulated rules provided that the analyst's judgements are regarded as the reports of a scientific observer."[4] *Berelson*, defined the content analysis is a research technique for the objective, systematic and quantitative description of the manifest content of communication.[5] According to *Barcus*, the content analysis is used here to mean the scientific analysis of communications messages….the method is broadly speaking the scientific method and while being catholic in nature, it requires that the analysis be rigorous and systematic.[6] According to Stone the content analysis refers to any procedure for assessing the relative extent to which specified references, attitudes or themes permeate a given message or document.[7] Further *Holsti* says that it is any technique for making inferences by systematically and objectively identifying specified characteristics of messages.[8] *Kerlinger* defined content analysis is a method of studying and analyzing communication in a systematic, objective and quantitative manner for the purpose of measuring variables.[9]

**IV. Purpose of Content Analysis**

A careful consideration of the above said definitions of the content analysis techniques revealed that this method shows emphasis on systematic, objectivity, qualification, context and validity with reference to the interferences drawn from the communication content about the sender, the message or the receiver of the message. Thus content analysis is all about making valid replicable and objective interferences about the message on the basis of explicit rules. The material for the content analysis can be letters, diaries, newspaper content, folksongs, short stories, messages of radio, television, documents, texts or any symbols.

Further like any other method the content analysis conforms to three basic principles of scientific method. They are:

a. **Objectivity** which means that the analysis is pursued on the basis of explicit rules which enables different researchers to obtain the same results from the same documents or messages.

b. **Systematic** means the inclusion or exclusion of content is done according to some consistently applied rules where by the possibility of including only materials which support the researcher's idea is eliminated.

c. **Generality** means the result obtained by the researcher can be applied to other similar situations. By generality we mean that the findings must have theoretical relevance; purely descriptive information about content, unrelated to other attributes of content or to the characteristics of the sender or recipient of the message is of little scientific value.

The three requirements are not unique to content analysis, but are necessary conditions for all scientific inquiry. They serve to indicate that, in general terms, content analysis can be regards as the application of the principles of scientific research to the analysis of communication content. From this above analysis the general consensus on the defining characteristics of content analysis has objectivity, systematic and generality. Apart from these characteristics the content analysis contain quantitative and qualitative of the content. The quantification has usually been accepted as one of the most important characteristics of content anlaysis. It is also equates with numerical terms. It aims at the classification of content in more precise terms than is provided by impressionistic 'more or less' judgement of 'either or'.

Traditionally the legal research method is acquainted with analytical, critical and comparative methods etc. But the content analysis is not ventured to apply due to the non-availability of statistical and data processing technology. Information and communication technology comes to the rescue of legal researcher to apply content analysis technique to legal research more precisely.

Holsti (1968) points out that the inferences about senders message, characteristics of message or the effect of the communication on the receiver, where the researcher interprets the content so as to reveal something about the nature of the audience or of its effects. Lasswell propounded the above said components in his classical formulation: WHO says WHAT to WHOM with WHAT EFFECT?[10]

The below stated Table-A adopted form Berelson (1952) gives a comprehensive picture of the different applications of the methods of content analysis.

**Table 1: Content Analysis Research Design**

| Purpose | Questions | Research Problem |
|---|---|---|
| To describe the characteristics of communication | What? | a. To describe trends in communication content.<br>b. To relate known characteristics of sources to the messages they produce.<br>c. To audit communication content against standards. |

| | | |
|---|---|---|
| | How? | a. To analyze techniques of persuasion.<br>b. To analyze style |
| | To Whom? | a. To relate known characteristics of the audience to message produced for them.<br>b. To describe patterns of communication. |
| To make inferences as to the antecedents of communication. | Why? | a. To secure political and military intelligence.<br>b. To make psychological traits of individuals.<br>c. To infer aspects of culture and cultural change.<br>d. To provide legal evidence. |
| | Who? | a. To answer questions of disputed authorship. |
| To make inferences as to the effects of communication | With what effect? | a. To measure readability.<br>b. To analyze the flow of information.<br>c. To assess responses to communication. |

**Uses of Content Analysis**

In this section an attempt is made to explain some studies about the applications of content analysis. It is most widely used in social science and mass communication research. It has been used broadly to understand a wide range of themes such as social change, cultural symbols, changing trend in the theoretical content of different disciplines, verification of authorship, changes in the mass media content, nature of news coverage of social issues or social problems such as atrocities against women, dowry harassment, social movements, ascertaining trends in propaganda, election issues as reflected in the mass media content and so on.

One of its most important applications has been to study social phenomena such as prejudice, discrimination or changing cultural symbols in the communication content. For example by using AIR INFOTECH software from 1950-2011 it was identified that there were 45 cases the Supreme Court relied "Sustainable Development Principle" and even that 45 cases were decided by the Supreme Court from 1993 to 2011. Further it identify how the Supreme Court relied the American doctrines in India in protecting environment. Moreover, the study can be made on the qualitative analysis of the content of the case. In the

qualitative analysis it was identified that the Supreme Court held that the Sustainable development principles are treated as law of the land after Vellore Citizen forum case in 1996.[11] The changes in the attitude of the Supreme Court and how the Court duly recognized the foreign principles as law of the land as general principles of law recognized by the civilized nation under customary international law.

One of the most frequent uses of the content analysis is to study the changing trend in the theoretical content and methodological approaches by content analyzing the journal articles of the discipline. Using this approach the researcher analyzed a stratified random sample of research articles published in the leading journals from and to a particular period and identify the character of authors and document the trends in empirical content, subject areas and methodological characteristics such as source of data, research design, sampling and statistical techniques used in the articles. Similarly, public attitude towards important issues such as civic amenities, unemployment and so on were assessed by analyzing the content of editorials or letters to the editor in newspapers.

One significant are of its use has been the analysis of newspaper content of the election coverage and editorial treatment to mould the opinion of voters. Some time it is used as unobtrusive research method to study sensitive topics to corroborate the findings arrived at by other methods such as persons involved in the conflict, possible causes of conflict, nature of victim's abuse and death and nature of reporting.

**Advantages**

a. It goes beyond the impressionistic observations about the phenomena and can help you make a quantitative expression about the phenomenon.

b. It is an unobtrusive research technique useful to study sensitive research topics.

c. It is content sensitive and therefore can process symbolic meanings of data. Though predominantly seen as a quantitative method, it can effectively capture qualitative content as well. The context sensitivity of the method will articulate the qualitative dimensions.

d. It is safe method in the sense that if the researcher found that a portion of the necessary information was missing or incorrectly codes, it is possible to return to the text and supplement the missing data. This is not possible in empirical study.

e. It can deal with large volumes of data. Processing may be laborious but of late computers made the job fairly easy.

f. It is a shoestring methodology, which is typically labout intensive and requires minimum capital investment.

**Disadvantages**

a. Its inferences are limited to the content of the text only. Similarly, symbols are processed and coded according to the attribution given by the researcher or coder. There is no guarantee that the sender or receiver shares the same attributed meaning.

b. When it deals with semantic differences or differences in regard to the meanings of words, the findings can be less valid and realiable.

c. It is argued that content analysis which confines itself to counting the individual units and their frequency of occurrence such as for example the number of times the word 'globalization' appeared, may fail to capture the meaning or significance with which these symbols are used in the texts analyzed.

d. The reliability and validity issues in content analysis still remain unresolved.

e. The method cannot be used to test causal relationship between variables.

**Quantitative and Qualitative Analysis**

Quantitative content analysis is the most common kind in the social science. Normally it is designed with statistical analysis. But it does not mean that the quantitative content analysis must be effective when it is designed as statistical analysis. The qualitative content analysis is well effective even with verbal. Compared with the relatively well accepted techniques for doing quantitative content analysis, however, guidelines for doing qualitative content analysis are far and few between. The quantitative content analysis is deductive sort with explicit or implicit hypothesis that the researcher wants to test with data. Qualitative content analysis on other hand tends to be of the inductive sort, analyses that might begins with research questions, but are then likely to involve observations about texts in general.

In the legal research the content analysis is a unit may be a 'section', 'article', 'case', 'concept', 'citation', 'paragraph', 'name of a person', 'name of a court', 'name of a country', etc. The counting of the above said data is very difficult in the traditional technique like counting it in journals, literature etc. But the development of the information and communication technology like "AIR Info-tech Software on Supreme Court and High Court cases", "Manupatra.com" are very useful in collecting the datas and counting the datas numerically for inferring the characteristics of content of the communication, antecedent of the communication and consequences of the communication.[12]

**Conclusion**

Research is a continuous scientific and systematic process and activity. Research always tries to discoverer new things. Research depends upon its

objective, nature and purpose. Some researcher may take objectives of impact analysis, thereby building, testing of hypothesis and behavioral analysis and so on. Legal research is regarded as a port of social science. It is directly related with legal reforms and aims to solve the problems. Content analysis method is properly applied in legal research. This method can be applied to study of court proactive, practice of judges, lawyers and prosecutor police and so on. It helps to explore and analyze the life of social unit selected for research; it can play a significant role in legal research. This method always requires a deep and minute study. It can be taken as the best method of collecting relevant information and data concerning an individual, a family or a group of persons. Weaknesses such as generalization regarding content analysis method can be easily resoved through training attained on the modern method of collecting data and information using the scientific techniques of gathering, classifying and processing of data. Even though this method is most useful it would be better if we could use study method accompanied by other methods as and when necessary.

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# WEB 2.0-ENABLED LEGAL REVOLUTION IN INDIA—WHY AND HOW INDIA WILL CLIMB THE LADDER OF ASTOUNDING SUCCESS

**Ms. Pranusha Kulkarni***

**Abstract**

The Indian legal literati – comprising law students, law teachers, legal professionals, lawyers and not to forget, the teeming citizenry – is emerging as a vibrant community of intellectuals with great potential to contribute significantly to the global legal developments, whether research-based or profession-oriented. To further facilitate this tremendous potential of us to accelerate towards a bright future, induction of the ICT (Information and Communications Technology) tools into legal information-dispensation, study and research seems to be an excellent idea with not only of a great intrinsic value, but which also poses to be an apt elixir to salvage the Indian legal fraternity.

Without prejudice to the fact that the Indian legal community does have an immense potential to lead the world's lawyers, the author respectfully concedes here that, this potential is yet to be realized. Leaving aside a handful of law schools in India doing exceptionally good, the general legal scene of the country is pathetic. Some of the law schools here lack even the basic infrastructure, including full-time faculties and decent libraries, calling us for a need of not pressing too hard, in questioning the absence of ICT in the classrooms and libraries of such law schools.

The problem of lack of facilities, traces its tangled roots to the lack of market-ready legal scholars who can be appointed as lecturers. A general lack of funds, India still being a land of the poor, further fuels the problem of lack of access to standard legal libraries. These coupled with the bureaucratic red tape prevalent in the Indian Executive, make even the so-called highly educated tech-savvy professional fall a hapless prey to the winding proceedings and incomprehensible legalese, every time he enters a government office, or a Court of Law, leave alone a man of average intellect, who has little knowledge of even the basic alphabet.

In this paper, the author analyses in detail, how, even with these hardships, we can build a chain of world-class legal researchers, lawyers and legal professionals, together with a legally informed citizenry, rising up from the bottom of every doomed ladder in our nation, with the effective and intelligent

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aid of the integration of ICT in the legal profession, with the advent of Web 2.0 in the class rooms, and with the installment of interactive and actively responsive web portals on the government websites, for the citizens to inform themselves for their own upliftment – thus feeding their basic human right.

Drawing from the various successful working models of the West, the author underscores the fact that India as a responsible nation, cannot continue to provide legal education deficient in quality and anachronistic in its existence, to its wannabe lawyers.

As a bridge connecting the gap between what is and what ought to be, the author deals with the idea of a possible collaboration of certain of the able law schools of our nation with the NME-ICT (National Mission on Education through Information and Communications Technology) of the Indian Government, in creating a synergetic effect on the way in which access to legal information and research is currently being got in India.

With this proposed synergetic partnership of the premier legal education institutions with the State's functionaries, the author envisages a movement spearheading the legal-education revolution in the nation, which would aim not only at disseminating legal education to millions of students free of cost – in the form of free online study materials and free online lectures by stalwarts, but also at bringing in a paradigm shift in the way in which legal research presently gets undertaken, by students and lawyers alike.

The collaboration also envisions mass digitization projects in producing standard e-books – richly and liberally funded by all the able and willing patrons and donors, within and without the legal field. The e-books would be mandatorily in English and all the regional languages of India. Further, the movement is also envisioned to aid the government in supplying with the necessary skilled manpower in assisting in the developing of citizen-friendly understandable legal content on the government websites. The problem of access to internet by all the students, lawyers and citizens is accorded an effective solution in the paper.

The author goes on thus to explain further: how with a relatively small amount of investment – of money and people – the partnership between the law schools and the government will take us a long way in lessening the burden of courts, in increasing legal literacy among citizens, and also in conceiving a new stage in the evolution of the legal system of India. That is, the author envisages a tipping point of success culminating the revolution.

The paper takes leave from the readers with a conclusion which champions a vision on the lines below mentioned:

From hard-bound case-books to digitized e-casebooks; from the boring talk-and-chalk pedagogical method to the dynamics of the web-based interactive

multi-layered method of teaching, from an oblivious layman to a highly knowledge-equipped legally literate responsible citizen, free access to legal information, research and education in the way as has been elucidated – drawing from various sources and authorities – will make India more market-ready, more proactive and more educated; and thus more successful (economic, social, political success inclusive)!

*P.S.: The author views this work as a vision supporting the constitutional mandate of universal access to education, and more so in the author's view, is the need for universal access to legal education in this highly industrialized world. The author would like this vision to be ultimately realized under the aegis of those responsible and able, and thus pave way for a panacea to offer all it has, in enlivening the vibrant democracy that India is.*

**Introduction**

Web 2.0. This is making waves all around the world as the coolest modern technology. Blogs, wikis, tagging, social bookmarking, multimedia sharing, audio blogging, podcasting, RSS and syndication, you name it, Web 2.0 has it. Web 2.0 has emerged as the best facilitator of participatory information sharing, interoperability, and collaboration on the World Wide Web, all with a user-centered design. Tim O'Reilly, the founder of O' Reilly Media, who sparked for the first time, ideas about the concept of Web 2.0 in the O'Reilly Media Web 2.0 Conference in 2004, has defined Web 2.0 as:

*"Web 2.0 is the business revolution in the computer industry caused by the move to the Internet as platform, and an attempt to understand the rules for success on that new platform."*[1]

*Thus, the term is simply understood as a transition of the World Wide Web from the read-only Web 1.0, to a highly interactive, multi-layered cyber space in which is seen an active participation and contribution, by people all over the world. The term stands as the harbinger of the active netizen who contributes to the contents on the World Wide Web.*

Off late, Web 2.0 has been inducted in the education field in the West, which resultantly has seen enormous improvements in the grasping ability of the students due to the use of interactive technological tools. Both in the primary and higher education sectors, Web 2.0 has been a big hit. Before dwelling onto how Web 2.0 could be inducted into the Indian Legal scenario, let us look into the development of the Indian legal education system.

**Legal Education in India – Where it all started**

The Indian legal education system, dates as far back as the hallowed Vedic times. It is a well-known fact that ancient India had supremely accurate legal system functioning very efficiently. Stress was laid on *dharma* and duties, rather than rights and fights for the same. In those times there was no formal education

or training in the field. Knowledge and expertise in the area was acquired through self-study and introspection.[2]

The existing legal education system came to us as one of the many colonial side-effects, in which hangover we still remain. The British, during their rule over India, enacted many statutes, as also establishing many educational institutions, which *inter alia*, catered to the needs of imparting legal education in the nation.

Later when the Constitution of India was adopted, education as a matter of policy fell under List III of Schedule VII, thus enabling both the Centre and the States to legislate to regulate the legal educational institutions. Thus started the regulation of the legal educational institutions by the Bar Council of India, in pursuance of the UGC Act, 1956 and Advocates Act, 1961. Though the regulatory measures have been reduced into rules and laws, their grass roots implementation has suffered a serious setback.

**India Legal – The Current State of Affairs**

India, has more than 900 legal education institutions, in which approximately 400,000 to 500,000 students study law, among who, around 60,000 to 70,000 graduate every year to join the legal profession.[3] The nation no doubt appears to have in place, a full-fledged legal education system. Estimates state that India has approximately 1.2 million enrolled lawyers.[4] But what is the quality of these graduating lawyers, is the million-dollar question.

In *Powell* v. *Alabama*,[5] the US Supreme Court has enunciated the importance of an advocate to a society thus:

> *"Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, in determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, be convicted on improper evidence or evidence irrelevant to the issue or otherwise inadmissible. He lacks both skill and knowledge to adequately prepare his defense, even though he may have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he may not be guilty, he faces the danger of conviction because he knows not how to establish his innocence. If that be true of men of intelligence, how much more trice is it of the ignorant and illiterate, or those of feeble intellect…"*

This underscores the quintessential role an advocate plays in any given civilization – that of defending justice and the Rule of Law; that of protecting the unprotected; that of giving voice to the unheard and that of preventing injustice from dilapidating the structure of natural justice. The profession of law is quite special and unique in its own way. This is because the profession is a noble one

and has a certain amount of respect attached to it. It is for this reason that Roscoe Pound referred to a lawyer as one pursuing a learned act.[6]

But, the reality of the legal education sector is sadly very different. Education, as has been understood by humankind, is supposed to lead to the overall spiritual development of a human being. Education is supposed to enlighten a human being towards his/her complete self-realization and self-actualization, leading to the formation of an enlightened individual. But, is this kind of education being realized in India today?

Let us picture an ordinary classroom in an ordinary law school in an equally ordinary town of India: The rate of attendance of the students is abysmally low, leave alone the rate of enrolment in the law school. The faculty, if the students are lucky enough to have one, is one among the lowest quality of the sorts in the world. Now, is this the kind of legal education we envisage our Nation to have? Do we cherish being in this position, when our dreams about India are sky-scraping? *Easy is to dream every night, difficult is to fight for a dream*, says an age-old adage. How aptly does it apply to India right now!

The overall literacy rate in the country, as per the 2001 census, was 64.8 %. This implies that we do not even have the formal means to know about the talents of the remaining 35.2 % of the population, let alone try to nurture their talents. This is a very high under-utilization of the nation's human resources.[7]

When the National Knowledge Commission (NKC) was constituted in 2005 as a high-level advisory body to the Prime Minister of India, it called for a change in the approach towards legal education. The NKC stated:

> *"Legal education should ... prepare professionals equipped to meet the new challenges and dimensions of internationalization, where the nature and organization of law and legal practice are undergoing a paradigm shift. Further, there is need for original and path breaking legal research to create new legal knowledge and ideas that will help meet these challenges in a manner responsive to the needs of the country and the ideals and goals of our Constitution."*[8]

Five years down the line, have we achieved what we had set ourselves to achieve? The answer is an emphatic No. Apart from handful islands of excellence in legal education in India, the overall picture is nothing more than a nightmare. And for India to be the knowledge super-power it yearns to be, excellence should rather be the rule than the coveted exception.

But, just because these flipsides exist, it does not mean that India has not got talent. Milton Friedman, who was a Consultant to the Indian Ministry of Finance in 1955 had said:

> *"The great untapped resource of technical and scientific knowledge available to India for the taking is the economic equivalent of the untapped continent available to the United States 150 years ago."*

Thus, among the various strengths India possesses, the important are:

- A large human resource of high intellectual caliber
- A growing middle class with a high priority for education
- The potential of the technological and communications backbone to expedite the process of knowledge empowerment.

As has been pontificated by the Supreme Court of India in *Suk Das* v. *Union Territory of Arunachal Pradesh*,[9] the absence of legal awareness is responsible for the deception, exploitation and deprivation of rights and benefits of the poor. In such a situation, law ceases to be the Protector because the person it protects is unaware of the protection extended to them.

The Indian legal education and literacy are a means to achieve the end of formulating a vibrant judicial system. The Indian judicial system, with all the millions of arrears of cases in the Higher and lower courts, is distinguished to be one of the best judicial systems in the world. When with all the lacunae it is so, it is not hard to realize what potential we have in us, which can be made kinetic, if only we plug the systemic loopholes looming large.

**Gen Y and the ICT – Modern Education Demystified**

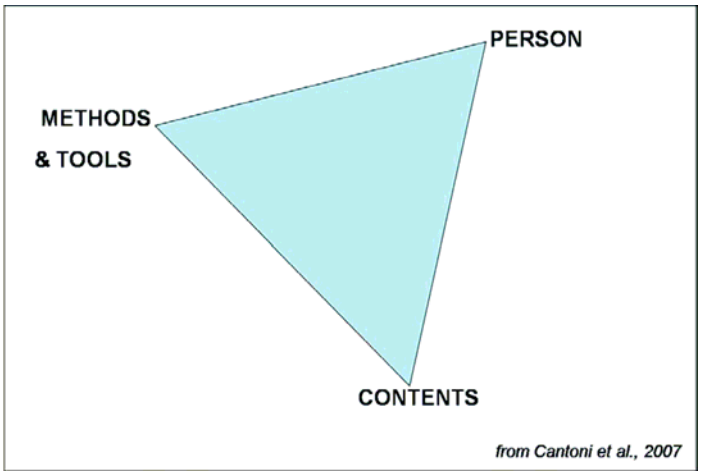
> *"Someday, in the distant future, our grandchildren's grandchildren will develop a new equivalent of our classrooms. They will spend many hours in front of boxes with fires glowing within. May they have the wisdom to know the difference between light and knowledge."- Plato (427-347 B.C.)*

This was the prediction of one of the greatest philosophers of yore, and undoubtedly, it has unequivocally come true. Students born between 1980 and 1996 (sometimes 1982-2000) have been labeled the Net Generation (Net Gen), Gen Y, Millennials, iGen, or digital natives[10] to reflect their upbringing in a milieu where communications technology is a given. Their familiarity with the web as a source of information and their preference to be constantly and immediately in touch with their peers through ICTs distinguishes them from previous generations of students.[11] No generation is more at ease with online, collaborative technologies than today's young people – "digital natives", who have grown up in an immersive computing environment. Where a notebook and pen may have formed the tool kit of prior generations, today's students come to class armed with smart phones, laptops and iPods.[12]

Marc Prensky, who coined the expression "digital natives" states that the Millennials have developed new neural paths by using the ICTs since childhood

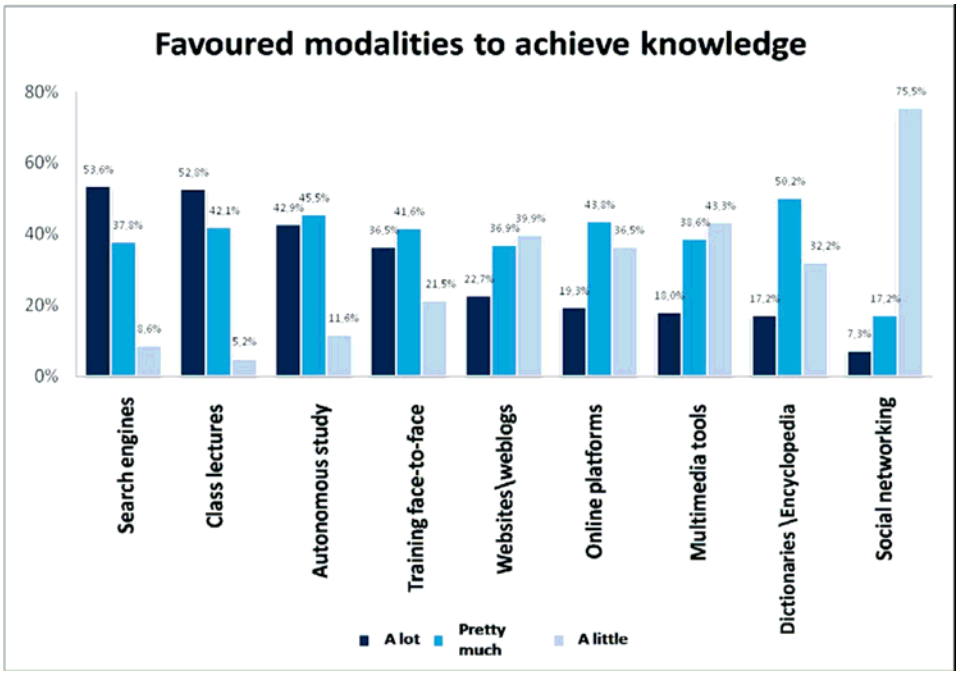
and that this makes them different in the way they think and learn, when compared to the previous generations.[13]

The three milestones in the education of these digital natives in the present day world can be diagrammatically represented[14] as follows:




Thus, the above diagram clearly indicates that the description of the relationship between people/strategies/educational contents now-a-days, can be understood and set in a – more or less- deterministic way, considering it like a direct impact, or a systemic influence.[15]

The results of the research conducted at Ticino, Switzerland, regarding the relationship between the Gen Y and ICT, lead to certain surprising revelations. The study has unveiled a complex reality, where a sort of "technological potential" or "media skill"[16] has been confirmed indeed, but to a less great extent than acclaimed by some researchers describing the "digital generation". It seems that "attitude" (rather than "skill" or "potential") would be more correct to define a sort of broader disposal (if compared to the one of older colleagues) to relate to other people and to knowledge through ICTs. Predictably, indeed, it came into light that young people hang out daily with technologies, both to perform their working tasks and – and most of all – to communicate and for leisure. But, the need of digital experiences in the learning process has not been really remarked: new technologies are perceived mainly as a useful help, and not as a binding step. The demand of digital learning appears more as a contextual opportunity ("if you can use a projector during class, why not do so?" said a participant) than a learning need; furthermore, the qualitative phase cleared that ICTs are appreciated in the training experience only when they are supported by "traditional" instruments such as lessons in presence, interpersonal interviews, books, folders of photocopies, notes, etc.[17]




The above graphical representation denotes the results of the study. It is very much evident that Class lectures, autonomous study and training face-to-face are still the most preferred modalities of gaining knowledge among the students. Though the use of Search Engines has equivalent, if not equal, takers, it is gathered from the research that the students use search engines as quick fix remedies, when they are in need of urgent information; one of the students described the results obtained by the search engines as "preambles to the literature".

When this is the attitude of the students, and when this is what research has confirmed, it would be but intelligent of India, if this psychology of the Gen Y is cashed on and their propensity of being tech-savvy is milked effectively.

**NME-ICT: What does it have to say?**

National Mission on Education through Information and Communications Technology (NME-ICT), is a flagship initiative of the Government of India, which is built on the following philosophy:

> *"For India to emerge as a knowledge super power of the world in the shortest possible time it is imperative to convert our demographic advantage into knowledge powerhouse by nurturing and honing our working population into knowledge or knowledge enabled working population."* [18]

Under this Mission, a proper balance between content generation, research in critical areas relating to imparting of education, and connectivity for integrating our knowledge with the advancements in other countries is being

attempted by the Government. For this, a critical mass of experts in every field working in a networked manner with dedication is being sought by the Government. Although disjointed efforts have been going on in this area by various institutions/organizations and isolated success stories are also available, a holistic approach is being worked on. This Mission seeks to support such initiatives and build upon the synergies between various efforts by adopting a holistic approach.

It is obvious that emphasis on ICT is a crying need as it acts as a multiplier for capacity building efforts of educational institutions without compromising the quality. The Mission is also deemed necessary to sustain a high growth rate of our economy through the capacity building and knowledge empowerment of the people and for promoting new, upcoming multi-disciplinary fields of knowledge.

The Mission aims at delivering at the doorsteps of all the learners, free study materials, by which a self-paced holistic learning takes place, leading to the education of millions of those who cannot afford to go to schools and colleges. Thus, by this Mission, the Government aims at realizing the right of universal access to education. Thus, in part, it aims at fulfilling the mandate of Article 21A[19] of the Constitution of India.

**The Legal Revolution**

New communication technologies through the Internet offer opportunities for law students, faculty and practicing lawyers to support the learning process. The Internet provides a wealth of resources and diverse communications platforms to encourage peer interaction, collaboration and feedback from teachers and others.[20]

Legal education should employ new technologies so that law students are prepared for their professional lives in which technology for research and communications will play an important role. It is important to teach students in a way that increases their comfort with technology and collaborative work.[21]

In total, there is no doubt that the well-off and the able law schools in India can benefit from such huge advantages of Web 2.0. What about the revolution? What about the majority of the law schools which lack even the basic amenities, leave alone the modern ICT gadgets? Improving the administration and pedagogy of law schools is just one part of the revolution. The other main part is the empowerment of the electorate and the have-not-students, who can benefit from the synergetic partnership between the elite law schools and the governmental organizations.

***Cost effectiveness of the National Legal Cloud***

The author, in this paper, envisages the creation of a *National Legal Cloud*, which would serve as the one-stop legal database for not only law students, but

also the common man. There can be two parallel clouds operating in this mega cloud, one each for the law students and the electorate in general.

From the viewpoint of funding agencies, the question of cost-effectiveness of any solution that is proposed assumes great importance. When performing a cost-benefit analysis, the cost of deploying a technological solution should be supplemented with the recurring costs which can be substantial. On the positive side, these costs should be balanced with savings resulting from the fact that a single instructor now reaches out to a much wider audience. Further, the result of having better-trained manpower can confer enormous benefits to India and will have a positive cascading effect throughout the Indian economy. This would be more difficult to quantify but has to be a crucial input in any analysis of the viability of the projects. Finally, since better trained manpower would obviously reduce the retraining costs of law colleges (which many law colleges are forced to undertake, given the poor input quality), a public-private partnership to bring down costs could be considered.[22]

***What we can learn from the Distance Education Program at IIT Bombay*[23]**

The Distance Education Program (DEP) of IIT, Bombay, is an activity of the Kanwal Rekhi School of Information Technology (KReSIT). The DEP was set-up in early 2002 with the specific mission of reaching IIT courses to teachers, working professionals, and students of other institutes and organizations across India. The program started out the modest four Remote Centers (RCs), including one at IITB. The program had eleven centers, as of March 2003, with several centers being commissioned to join shortly thereafter.

The goal of DEP is to offer courses taught by expert teachers to a large number of participants across the country. Objectives of the program can be summarized as:

- Creating a quality learning environment at remote locations, with facility for live interaction between participants and faculty.
- Providing a cost effective and scalable solution for the participating centers and participants in program, using technology to ensure that the dynamics of content delivery matches the learning needs.

The model provides the benefit of live interaction between the participants and faculty. The mechanism to provide interaction is briefly outlined below:

- Lectures from the central site are synchronously transmitted, *via* satellite based communication system through RCs.
- A typical classroom at each RC has thirty to forty students viewing the lectures, which are projected onto a large screen. This classroom environment provides the opportunity for the participants to interact with each other.

- Any participant from any of the RCs has the freedom to ask questions during the lectures. The desire to ask a question is communicated to the faculty through video-conferencing software.
- The faculty may grant the floor to the RC, in which case the question being asked is heard by the faculty as well as the participants at all the other RCs. Subsequently, the floor is taken back by the faculty, the question is answered and the lecture continues.[24]

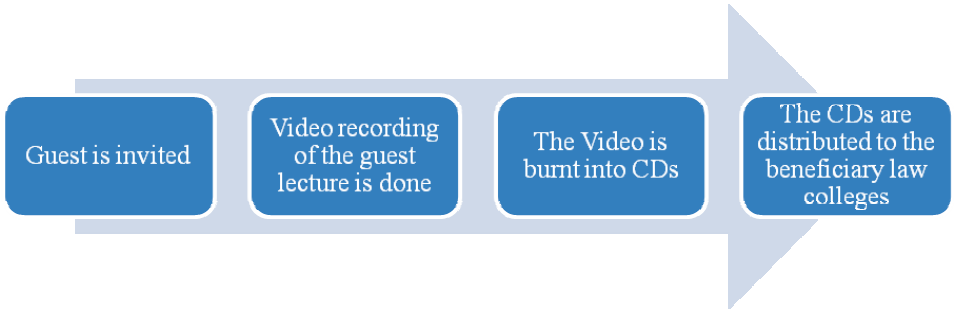
This model of distance education has an immense potential of application in the field of Law. Certain of the ably promising Law Universities of India have all the infrastructure, funding and manpower to host such RCs, together with the potential of being the resource centers to develop the course materials, syllabi and suitable pedagogical methods.

Lectures by legal bigwigs can be streamed live through the technologies of cloud computing and online interactive portals, which will benefit the thousands of law students studying at the ordinary law colleges spread across India. Also, under the NME-ICT, more than half of the financial support is provided by the Central government, in order that, *inter alia*, the required internet connection is obtained from BSNL, which in turn is provided free of cost.

**Models of using ICTs in enabling the Revolution**

Presently, be it in the premier law schools, or in the ordinary law colleges, guest lectures are conducted by inviting the guest lecturers to the respective colleges. It is a very private affair, which is not recorded in any sentient form. Even if the lecture is recorded, the video is circulated among a limited circle of academicians and students at the college at which the lecture was conducted. Also, not all law colleges in India can afford the cost of inviting eminent personalities to address their students. Hence, there is a sort of inequality in access to knowledge and information, with the well-off students studying in the relatively well-off colleges gathering more benefits when compared to those poor students, who study in not-so-reputed colleges. Thus, there is no equality of status and opportunity being realized, though it has been guaranteed by the Constitution of India, in its very Preamble.

Hence, to nullify this inequality of status and of opportunity, the author presents here, two sample models of conducting lectures in such a way, so that it reaches the maximum possible students throughout India. Below are the pictorial representations of the models:




**Model Number 1**

In this model, the only extra cost incurred by the college administration is the cost of the CDs which is distributed among the various beneficiaries. Also, the time required to do this is considerable. Hence, let us look into the second viable option, which according to the author, is the best suitable model, which can be followed by almost all the law colleges in India, irrespective of their financial statuses.

Instead of investing in CDs, which stand the chances of getting corrupted or destroyed in untoward events happening, the second model prescribes for a more cost-effective and long-lasting way of not only preserving the lecture series, but also of disseminating the same at the least possible cost. And this can be done only with the help of the technology of Cloud Computing.[25]

It is a well known fact, based on the concept of Economies of Scale that, in general, large organizations/businesses run more efficient IT departments, run more sophisticated applications, and reach more employees. The below table shows the cost differences in cost profile by business size. It shows that businesses over $1 billion in revenue spend less than $1,100/seat/year, or 38% lower than the cost/seat for a small business.[26]

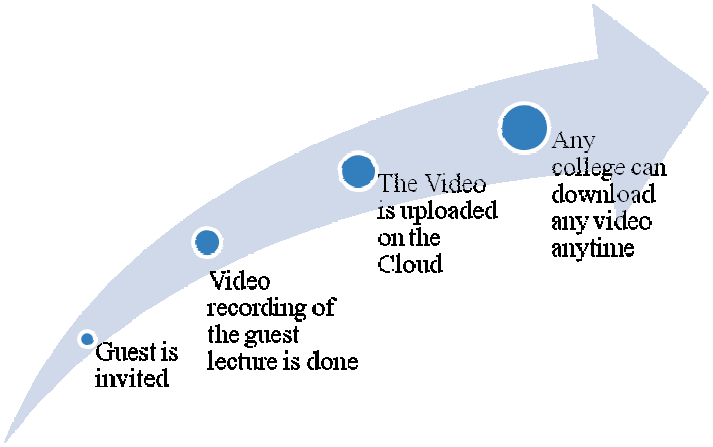
| | Small Business | Medium Business | Large Business | Very Large Business |
|---|---|---|---|---|
| Revenue | $20,000,000 | $230,000,000 | $1,000,000,000 | $10,000,000,000 |
| # Employees | 100 | 1,000 | 4,000 | 36,000 |
| IT Budget | $1,000,000 | $9,200,000 | $30,000,000 | $260,000,000 |
| IT Spend/User | $13,333 | $11,500 | $8,824 | $8,301 |
| Average $Cost/Seat | $1,667 | $1,438 | $1,103 | $1,038 |

*Source: Wikibon 2010*

Thus, inferring from the above table, it is clear that India (The annual revenues of India as per the 2010 estimate is $183.6 billion[27]) is well above the specified revenue rate which is required to break even for the sustenance of a financially stable internal cloud computing network. Thus, if a *National Legal Cloud* is created, it would hardly affect the Indian economy; in fact, it would benefit the business of government in saving the money which would otherwise be spent on giving out largesse sums to educate the uneducated.

**The Cloud Computing Model**

The second model, which is the Cloud Computing Model is the most apt model of ICT-enabled legal education for India. The following is its pictorial representation:




**Model Number 2**

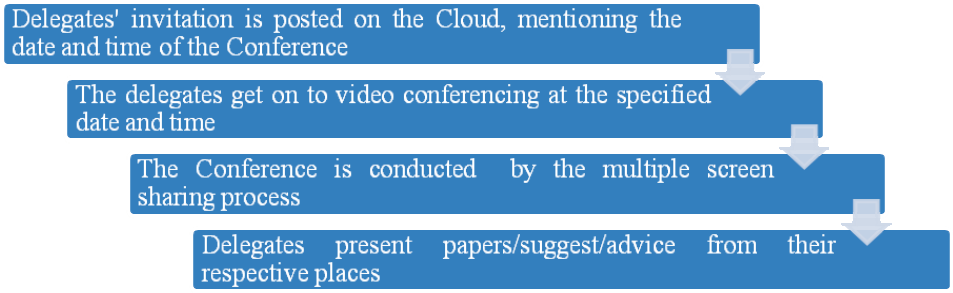
It is thus seen that the above model poses no threat – financial or otherwise – to either the elite Law Schools of India, or the Government of India. The author opines that it is the best way of dealing with the increasing education needs of our growing population.

Thus, the above *figures (1) and (2)* show two of the many models which if implemented by the elite Law Schools, together with aid and assistance by the Government of India, will lead to a dramatic improvement in the status of the legal education in India, which would eventually help maintain the standards of the judiciary.

***Conducting Conferences***

Organizing lectures apart, ICT can be inducted in the conduction of national and international conferences too. The following flow chart shows the way in which conferences are conducted at present. One word which describes the procedure is – Complex:


With the advent of ICT, the same process can be drastically simplified, whose pictorial representation is as follows:

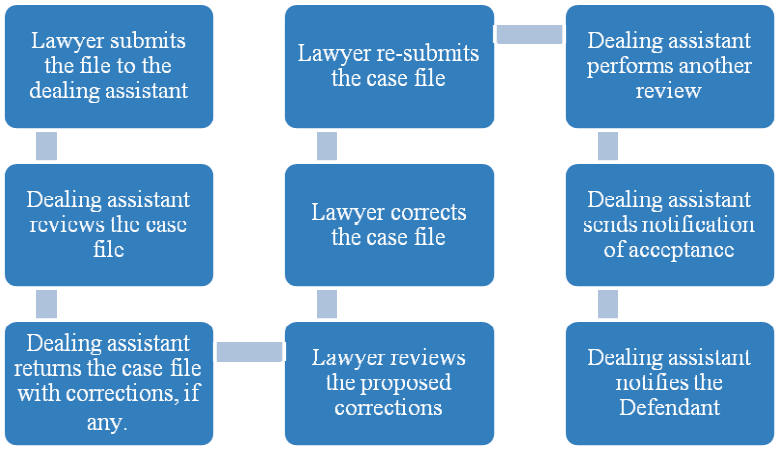



Thus, the process of conducting the academic exercises like Conferences are so utterly simplified by the use of Cloud computing, that almost anyone, irrespective of the financial constraints of travel, accommodation, etc., can contribute to the existing think tank and hence can bolster the creation of the knowledge economy.

The same method can be used in the conduction of e-Moot Court Competitions, Lecturers' Conferences and meetings, legal professional networking and sharing of online legal data bases, which raises the bar of the Indian legal system considerably.

Why, with the help of this useful technology, Courts of Law are going electronic, with India's first e-Courtroom having been set-up in the Delhi High Court. The entire proceedings of the suits are overly simplified, not only for the judges and the pleading lawyers, but also for the plaintiffs and the defendants, by the induction of ICT in Courts of Law. One simple example of how digitization of Courts helps all the stakeholders involved is represented pictorially as follows:

**Traditional method of filing and review in Courts**




This long and tedious process of filing and review of plaints in the Court is cut-short by the induction of ICT, as follows:


Thus, the time consumption in routine tasks is very much reduced, making way for the judges and the lawyers to be involved in more productive intellectually stimulating works. The above representations are only indicative, and not exhaustive. Similar simplification of the listing and hearing procedures are experienced, once the ICT-led reforms get entrenched in the judicial system.

**How does the layman benefit from this Synergy**

The synergy thus created by the collaboration among the elite Law Schools, engineering colleges (for the development of newer viable technologies) and the governmental agencies could help the common man, when access to legal information is provided to the general public through:

- Live streaming of legal awareness series in vernacular languages, through the internet, as also through certain of the popular television channels.
- E-books on the same lecture series may be uploaded on parallel clouds exclusively meant for the common man.

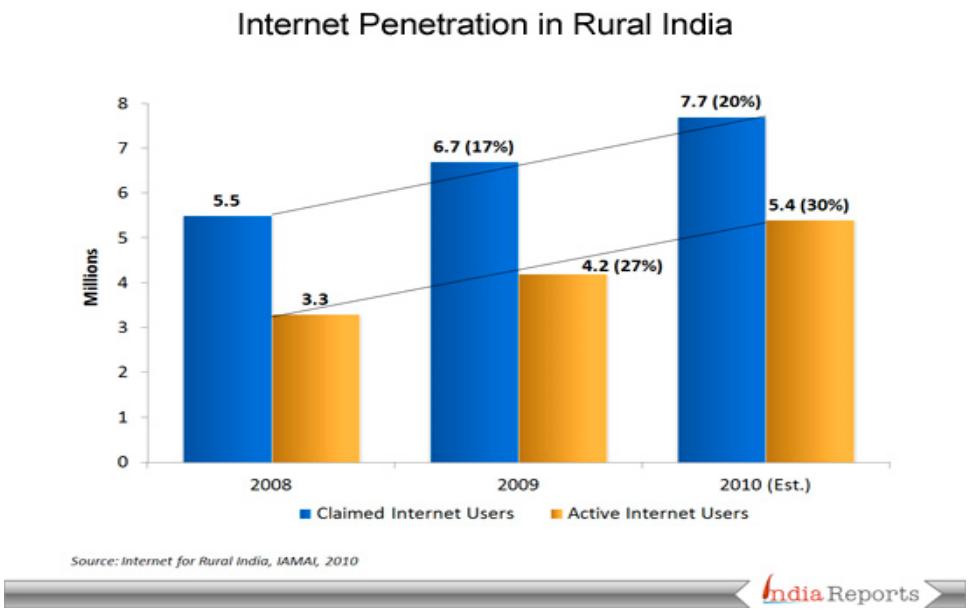
- The technology inducted into the courts reduces the court fees which has to be borne by them, thus lessening their burden.
- Every block and district headquarters in India, must have an e-portal, which should screen periodic awareness programs in vernacular languages, they being transmitted via the *National Legal Cloud*.
- The videos may be downloaded from the Cloud, and may be freely distributed among the people who so desire to have their own copies.

This would raise the bar of the Indian legal scenario to a considerable extent, paving way for a legally well-informed citizenry.

***Why is it possible?***

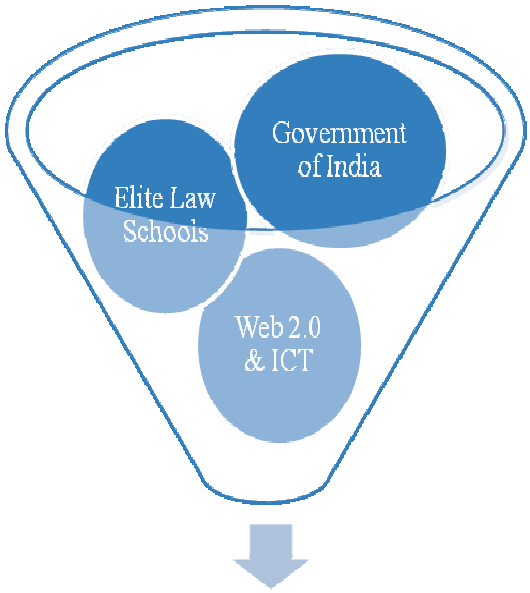
Recent trends in the internet penetration in India, though lesser in rural India as compared to the urban, has shown an overall growth in the internet usage among Indians.

In a recent survey by Internet and Mobile Association of India (IAMAI) and Indian Market Research Bureau (IMRB), claimed internet users, who have ever used Internet, in rural villages, have grown from 5.5 million in 2008 to 6.46 million in 2009 and the number of Active Internet users, who have used Internet in the last one month, has risen to 4.18 million in 2009.[28]




This change in the internet usage pattern among Indians is a welcome sign which would bolster the programs of legal literacy and education.

**Conclusion**




The above diagram poses a fitting conclusion to this paper. When Web 2.0 and ICT are used in educating not only the law students, but also the masses, there is a creation of a legally literate society, whose people are more aware of their rights and duties towards the nation as a whole. This is nothing but the realization of the Constitutional ideals of provision of equality of opportunity and social and economic justice.

> *"Our Progress as a Nation can be no swifter than our progress in education. The Human mind is our fundamental resource,"* said John F. Kennedy. Let us embark upon making our minds our most cherished resource. By the implementation of the above elucidated projects of revamping the legal system in India, the author believes that, India would climb not only material success (the raise in the GDP and per capita income), but also moral and spiritual success (contented and happier living, rise in the ranking by the Gross Happiness Index[29] and the Human Development Index[30]).

As Peter Senge has rightly said:

"*It's not what the vision is, it's what the vision does..*"

This vision, the author opines, would be very helpful for India in not only improving the education system, but also in leading the rest of the world, by pioneering a first-of-its-kind *National Legal Cloud.*

So be it.

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# PART-II:
# OPEN ACCESS TO LAW MOVEMENT

# GATEKEEPERS OF LEGAL INFORMATION: EVALUATING AND INTEGRATING FREE INTERNET LEGAL RESOURCES INTO THE CLASSROOM[1]

**Jootaek Lee***

## I. Introduction

The development of computer technology and the Internet seriously affected a "conceptual universe of thinkable thoughts," which had been established by the American Digest System and American law libraries since late 19th century and had ruled American legal thinking for more than a century.[2] The Internet and the availability of legal sources on the internet also undermined the "cognitive authority" formed by the National Reporter System and eliminated the need to have a physical location to keep an authoritative print record.[3] About forty years passed since computer assisted legal research ("CALR") was first introduced in 1973. The internet definitely booted CALR with its convenience and efficiency. The construction of legal databases on the Internet led us to consider when we had better use online databases than print sources and which provides more cost-effective research results.[4]

Indulged ourselves in online databases and deluded by their benefits and efficiency, however, it is also true that we have failed to distinguish high-cost databases such as Westlaw and Lexis with free or low-cost databases. We have been ignoring the disadvantages coming from using high-cost online databases. Today, many legal professionals and researchers are under financial pressure because of the increased cost of subscription databases. Many of the high-cost subscription databases are conglomerate and overlapping each other. On the other hand, free or low-cost databases[5] are well-developed, covering many types of legal sources. It may be taken it for granted that law libraries are considering the availability of legal sources on the internet and start canceling high-cost subscription databases. Many legal professionals and researchers, thus, started considering and relying on free or low-cost internet resources for their research and classes.

The number of these free or less expensive internet resources, however, is increasing every year, and their coverage for legal sources is also expanded.[6] Furthermore, just as the creation of a list of hypertext links to internet resources is no longer an easy task because of the gigantic number of resources available, so simply providing a created list to the law students will likewise irresponsibly confuse and intimidate them. This dilemmatic situation between the necessity for

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free or low-cost internet resources and overwhelming amount of information on the internet, impelled legal professionals and researchers to answer to the following questions: (1) When should free or less expensive internet resources be used instead of the high-cost subscription databases; (2) is it appropriate to teach and encourage law students skills to search free or less expensive internet resources; and (3) what evaluation standards for choosing free or less expensive internet resources will justify the introduction and integration of those resources into the classroom.

While this article will first attempt to answer questions one and two, the article will mainly concentrate on answering to the last question regarding how to evaluate free or less expensive internet resources. The author believes that evaluation standards based on authority, accuracy, currency, coverage, and usability are necessary for legal instructors in order to safely introduce free or low-cost internet resources into their classrooms. First, this article will attempt to define internet legal research and to show the difficulty of distinguishing internet legal research from other online searches. Next, the pros and cons of using free or less expensive internet resources for legal research will be discussed. Lastly, this article will attempt to introduce and establish evaluation standards which we can apply to various internet resources.

## II. Distinguishing Internet Legal Research from Other Non-Legal Online Searches

The adoption of free internet resources as a research tool has been publicly or tacitly recognized and legitimized in the legal field[7]; in fact, lawyers who fail to look at internet resources for their research can be subject to legal and ethical liabilities for their lack of competency.[8] According to 2008 Legal Technology Survey Report by the American Bar Association, 82.6 percent of 755 lawyers surveyed regularly and occasionally use free internet services for legal research.[9] 52 percent of the lawyers regularly use free internet services, which is the same percentage as print sources.[10]

More specifically, as of 2008, more than 20 percent of lawyers are looking at free internet resources when they are researching case dockets (38.2%), federal legislation/statutes (28.8%), federal administrative/regulatory/executive (30.6%), general news (77.8%), legal news (65.2%), companies (66.8%), legal forms (25.4%), public records (62.1%), experts (41.3%), judges (39.9%), lawyers (72.9%), state case law (22.8%), state legislation (35.9%), state administrative/regulatory/executive (36.8%), other state case law (22.9%), other state legislation (29.6%), and other state administrative law materials (27.6%).[11]

As shown in figure 1, the top five topics, which lawyers researched using free internet services, are general news, lawyers, companies, legal news, and public records.[12] While more than fifty percent of lawyers are using subscription databases such as Westlaw and Lexis for researching federal case law, case law from the attorney's home state, other state case law, legal citators, and other state

legislation/statutes, a number of lawyers are still researching federal case law (15%), case law from the attorney's home state (22.8%), other state case law (22.9%), legal citators (11.3%), and other state legislation (35.9%), using free online services.[13]

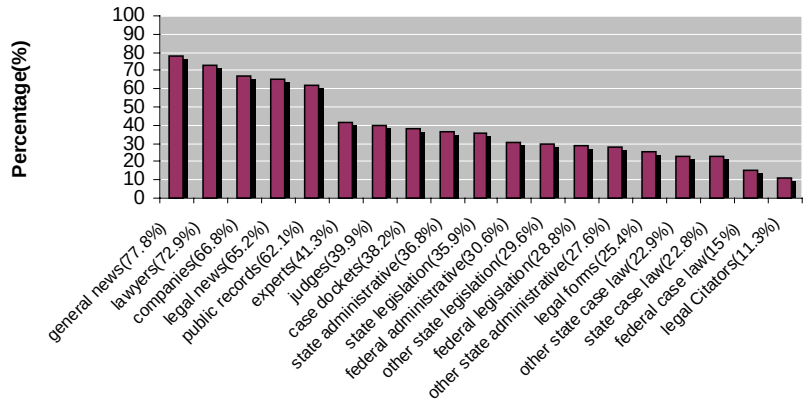


**Figure 1. Topics Lawyers Researching Using Internet Services**

**<2008 Legal Technology Survey Report by ABA>**

Legal researchers' reliance on internet legal research,[14] using free or less expensive internet resources, can also be inferred from the expansion of definition and coverage of internet legal research. Internet legal research can be dichotomously divided into two main parts: searches for legal sources and searches for general references. Searches for legal sources include locating legislative, judicial, and administrative primary sources and locating secondary sources such as journal articles, legal encyclopedias, treatises, etc. Searches for non-legal general references include locating encyclopedias, almanacs, yearbooks, handbooks, dictionaries, directories, biographical sources, geographical sources, government and statistical resources, health resources, business resources, etc. Searching for legal sources used to be something that distinguished legal research from other online searches.

However, the bright line distinguishing online legal research from other non-legal online searches has become blurred. Online legal searches became more complex as the frequency of non-legal general references searches increased because of the growth of empirical legal research and interdisciplinary legal research. While in traditional legal research, legal researchers mainly look at the primary and secondary legal sources, contemporary legal researchers are less likely to rely on the traditional secondary legal sources[15] and rather, depend upon the non-traditional sources such as blogs and Wikipedia.[16] Additionally, while traditional legal scholars have been skeptical about the adoption of the

methods of other social sciences,[17] new trends of empirical and interdisciplinary legal researches make legal researchers look at the general reference resources like data sets and statistical analysis. According to the ranking from Washington & Lee Law School, *Journal of Empirical Legal Studies* ranked top five in making the greatest impact on other legal scholars and being cited most often since 2006.[18] And an article in the *Journal of Empirical Legal Studies* suggests that "with the explosion in information technology, data sources on the legal system are improving in quality and accessibility. Compared with just a few years ago, researchers today can easily access original data sets."[19]

Internet legal research is unique in that it requires legal researchers to learn and acquire particular techniques to search and retrieve the materials relating to legal issues.[20] The basic steps for internet legal research, as distinguished from other general internet searches, are as follows:

(1) Identifying and analyzing the facts and legal issues involved in the project;

(2) Determining what kind of information you need to locate such as whether it is old or recent, legal or non-legal, etc., and determining what kind of substantive area of law is involved. Determining the type of source and law may affect the reliability of internet resources. For example, if a user is looking for historic information, the internet may not be a good place to start;

(3) Setting up legal research starting points. One can either search the primary sources directly, or refer to legal research guides or legal encyclopedias on a substantive area of law and draw a big landscape picture first. Legal research guides and legal encyclopedias work more like metadata searches;

(4) Predicting which organization's website will most likely contain the information. For example, you select from among government agencies, specialty libraries, nonprofit and research institutes, trade associations, law libraries, professional organizations, and a lot of other information rich agencies;

(5) Using your judgment, experience, and skill to evaluate the resource in terms of coverage, currency, accuracy, authority, presentation and usability, and cost; and

(6) Identifying controlled terms or similar terms and using the proper syntax with the website;s unique Boolean operators, truncation, etc. for which instructions will usually be in the "help" section of the website. Like the high-cost database searches, "[k]nowledge of the terminology of the subject area of law is fundamental to successful computer assisted legal research."[21]

**III. Pros and Cons of Free Internet Legal Research**

Admittedly, it is true that most free internet resources lack in-depth analytical annotations, which oftentimes leads legal researchers to avoid them. In many instances, the unavailability of advanced search engines, and simultaneous multiple database searches can be considered as one of cons of free internet research. On the other hand, most subscription database search engines like Westlaw and Lexis provide more sophisticated searching syntax and field search options than web search engines. The information contained in such databases is organized more carefully, and a number of legal information professionals have designed and populated the databases. For example, Westlaw has about 7,500 staff members doing extensive legal research and making editorial enhancements to the sources in Eagan, Minnesota. Furthermore, the updating functions of Shepard's and KeyCite provided by Westlaw and Lexis can be considered as one of the most important benefits of the high-cost databases. Ignoring the updating functions may subject a lawyer to court sanctions.[22]

It is also true that "the scope of resources available via the internet cannot yet replace that of a well-stocked law library,"[23] particularly in terms of coverage and organization of legal information by professional law librarians. Of course, available materials in a law library cannot be disassociated from the catalogue, which allows users to search the materials, and law librarians who help patrons effectively find materials they need. Even if internet users can bookmark as many useful websites as they can whether by social bookmarking tools or bookmarking applications like Zotero in Firefox adds-on, a sea of information on the internet is useful to legal researchers only "if you know where to look"[24] among a garden variety of internet websites.

Legal researchers, however, cannot ignore the fact that performing research on the web using free or less expensive internet resources is more cost-effective than Westlaw, Lexis, and other online subscription databases and much cheaper than buying print sources. Other benefits of internet legal research come from the availability of a wide variety of general reference sources. For non-legal general reference sources, generally, internet resources provide broader and more comprehensive and more current information than subscription legal databases.

In addition to the cost-effective advantage of free or low-cost internet resources, most weaknesses of high-cost online databases such as Westlaw and Lexis can be cured and are being fixed by free internet resources because of the higher flexibility and greater number than high-cost databases. Obviously, Westlaw and Lexis do not contain everything. A number of free internet resources can holistically supplement and fix the deficiency in coverage that the high-cost databases have. Another weakness of the high-cost databases comes from the complexity which originated from containing too much information in a website and confusing users by making them faced with a sea of databases to choose from. Of course, too much information in a database makes it hard for developers to change its design flexibly and to make it simpler to search.

Free or low-cost legal research resources are increasing, covering more primary legal sources. Marian Parker, Associate Dean for Library and information Services, Wake Forest University School of Law, said

> "Every state in the United States is looking at doing its right part in making the primary sources of law available in an authenticated and preserved manner, in a digital format for everybody. … The rapidity with which the change is happening is faster than I think any of us predicted."[25]

Google, the most popular search engine by visits,[26] also launched a "Legal opinions and journals" database in its Google Scholar search in November, 2009.[27] It allows us to search for cases from the United States federal and state courts.[28] This increasingly free availability on the internet even affected and has already changed print buying patterns.[29]

Furthermore, even if there are concerns about the reliability of freely available online materials, the reliability of internet resources is increasing as the number of free databases created by non-commercial organizations increases. Many trustworthy organizations such as government agencies, courts, specialty libraries, and non-profit organizations have been creating their own digital databases and providing high quality sources to users for free. For example, the Law Library of Congress is trying to launch Law.Gov, in an effort to create a repository of all primary legal materials in the United States and to make them authentically available for the public to download.[30] Roberta I. Shaffer, Law Librarian of Congress, said in a letter to colleagues and friends:

> The Law Library is pursuing the registration of the "LAW.GOV" domain where researchers throughout the world will be able to find authoritative local, state, national, foreign and international legal and legislative information. The Law Library envisions hosting the site and collaborating with federal agencies, state, local, and foreign national governments, and international organizations to maintain a "one-stop" URL.[31]

The reliability of freely available internet sources will increase more by the authentication procedures as indicated in the report by AALL Leadership on Authentic Legal Information in the Digital Age.[32]

**IV. Evaluation Standards**

Evaluation standards for free or low-cost internet resources are necessary in order to determine the reliability of the resources. Free or less expensive internet resources will be safely introduced into our law school classrooms when the authentic evaluation standards for the resources are established, and legal instructors appropriately evaluate free or low-cost internet resources before introducing them to law students. I would like to introduce authority, accuracy, currency, coverage, and usability as evaluation standards.

**A. Authority and Accuracy**

The reliability of free or low-cost internet resources will increase even more when we evaluate internet resources by authority and accuracy, and weed out inauthentic websites. *The Bluebook* also provides that we can cite to a digital copy of a source if the copy is "authenticated, official, or an exact copy of the printed source."[33]

Authentication is narrowly construed in the context of admissibility of evidence into the court.[34] In addition to the narrowness of the definition, however, the evidence rule does not specifically mention and provide an illustration for the authentication of legal information on websites. I think authentication of legal information on websites was properly included in the broader definition provided by Government Print Office in its effort to authenticate digitally published documents on its website. According to Government Printing Office, authentication indicates "validation of a user, a computer, or some digital object to ensure that it is what it claims to be."[35] Authentic content is defined as content that is "complete and unaltered when compared to the version approved or published by the Content Originator."[36] The authentic content is distinguished from official content that is "approved by, contributed by, or harvested from an official source in accordance with accepted program specifications."[37]

We can determine the authority of a website and its content by various authentication methods.[38] According to Kelly Kunsch, authentication methods include "private communication models" and authentication through domain names of internet websites, and he recommends the latter, emphasizing more on the authenticity of a website.[39] *The Bluebook* encourages the former method, especially an encryption-based authentication method by digital signatures or public key infrastructure.[40] A principle adopted by Law.gov also seems to adopt the former method and focused more on the legal information itself than the website which contained it, saying, "The primary legal materials, and the methods used to access them, should be authenticated so people can trust in the integrity of these materials."[41]

Regardless of various authentication methods, the underlying goal of the authentication procedures is to ensure that the internet website is authentic, and legal information created and published by an original author(s) has not been altered and has been safely stored and displayed in that website. Arguably, authentic websites do not necessarily contain accurate, unaltered information. The U.S. Court of Appeals for the First Circuit in *Getty Petroleum* distinguishes accuracy from authenticity, discussing judicial notice of law retrieved from a web page.[42] The court, indicating a hearsay problem of the legal information from a website, emphasizes the importance of accuracy of law as set forth by the enacting authority.[43]

However, the authentic website is rebuttably presumed to contain accurate legal information.[44] The *Getty Petroleum* court also admits that in reality "authenticity and accuracy are never doubted when . . . widely-available, well-respected services are cited."[45] This must be commensurate with the intimation provided in an illustration for the authentication of public records or reports in Federal Rules of Evidence. The illustration in Rule 901(b)(7) intimates that purported public record and report is authentic if the document comes from the public office keeping it.[46] This must reflect the reality that we cannot check the validity of every single online document, comparing it with an original source. In other words, an individual researcher does not have enough resources to check the accuracy of all the legal information contained in a website. Likewise, original authors and publishers like enacting authorities do not have enough resources to trace all the flow of legal information they created over the internet and warrant that the legal information they created are transferred to and displayed on other websites without alteration.

Considering a tremendous number of websites, all containing the same legal information, only domain owners like online publishers are better positioned to be able to check and are responsible for the accuracy of legal information published on their websites than individual researchers and original authority. It is true that it must be very difficult for domain owners to verify legal information, especially when they get copies from other unofficial websites and are not the first receiver of the information from the enacting authority. However, the first domain owners of legal information websites, who receive copies from the original authority and print publishers, must play a gateway role in preserving the integrity and accuracy of legal information before it is distributed to users and the other websites.

It seems that high-cost subscription databases such as Westlaw and Lexis must have successfully played this gateway role as an original publisher of primary sources in print. For example, the Westlaw database reliably represents cases which have been reported in print by West's National Reporter System. *The Bluebook* also recommends citing preferably to high-cost subscription databases such as Westlaw, Lexis, and Bloomberg Law because of their reliability and authoritativeness.[47] This gateway role of high-cost databases could be possible because they have enough resources in terms of human resources and money. This, however, almost leads to "market failure" because of the databases' oligopolistic control over legal information—primary sources can be considered as public goods—and their hesitance to supply it to the public. Many researchers and practitioners, who lack financial assets, have not been able to easily access to the information contained in the databases.

Many governments and courts, therefore, have been not only making efforts to intervene in and cure this market failure situation, but they have also tried to play a gatekeeper role. Federal and state governments including legislature and their official publishers created their own official websites and

digitalized and published on the websites laws, regulations, and rules they made and published in print.[48] Courts have been publishing opinions and rules free of charge on their websites. Furthermore, governments and courts have exercised various efforts to keep the integrity of the legal information published on their websites. Especially, courts have played an important role in keeping their opinions and rules from being altered by publishing them in Portable Data Format ("PDF")—PDF files have low potentiality for tampering because users cannot edit the content. For example, the Supreme Court of the United States publishes on its website opinions and rules and allows users to download them in PDF; it further tacitly admits the accuracy of the information without disclaiming warranty or limiting its liability.[49] U.S. Government Printing Office has also made great efforts to provide authentic government information on its website since 2005 authentication initiative meeting.[50] Government Printing Office adopted and implemented the Federal Public Key Infrastructure by National Institute of standards and Technology. In addition to the provision of PDF files on its new Federal Digital System, it also provides GPO's Seal of Authenticity and digital signature by a blue ribbon icon on online PDF documents in order to ensure that a document is authentic, certified, and unchanged.

What, then, about other free or low-cost legal websites which are hosted either by private organizations whether non-profit or profit? Their websites may contain comprehensive legal materials including constitutions, statutes, regulations, and cases. However, they are neither an enacting authority nor a publisher. While they do not play the first gatekeeper role to keep the integrity of legal documents, as a domain owner, they must take the role as the second, third, or further gate keeper, to make users trust their websites and resources. In other words, they must make it sure that they get the complete, unaltered information from original publishers in order to keep their websites reliable. Domain owners can keep documents from being altered by maintaining documents in PDF. The authenticity of documents will further increase if domain owners keep digital signatures original publishers provided. Their good practice of keeping integrity of original documents will definitely raise their status to widely-available, well-respected services of which legal information can be safely relied by researchers and practitioners.

**B. Currency and Coverage**

The more current legal information on a website definitely means users' increased reliance on the website. Currency of information, therefore, is often included as a standard to evaluate the authority of a website.[51] The currency of information, however, should be distinguished from the authentication and accuracy of information. Currency of information is more likely to be an independent standard to determine whether a website contains updated, separate primary legal sources which may preempt and modify the legal effects of previously published legal information on the website. While the authenticity

and accuracy of a legal source on a website is determined mainly by evaluating the source itself and by comparing it with the original source, currency of information is mainly determined by looking at the website and its updating schedule by its owner. Currency of information is more related to updating legal information.

While many publishers let the legal information published in their print resources available on their websites free of charge, they oftentimes set up moving walls, making current issues not available for a few years in order to protect the economic sustainability of print materials.[52] This sometimes makes us assume that the online resources are not frequently updated in terms of legal information.

Moving walls, however, usually apply to legal journals and articles. Many government and court websites play a good role to update the primary legal sources such as cases, statutes, regulations, administrative decisions, legal forms, etc. For example, administrative forms must be a good example which shows that official internet websites provide the most current and reliable forms such as immigration forms by U.S. Citizenship and Immigration Services, foreign labor certification forms by Employment and Training Administration, tax forms by Internal Revenue Service, SEC forms included in EDGAR, etc. Regulations are also updated fast on official websites. Electronic Code of Federal Regulations ("e-CFR") on the GPO Access website is a good example which updates federal regulations on a daily basis and provides the most current information on federal regulations. This is actually faster than the Code of Federal Regulations database in Westlaw[53] as well as Code of Federal Regulations in print. Federal Register on the GPO website also contains "Today's Issue of the Federal Register,"[54] which allows users to look at the most current version—the same day as its print publication. Its publication on the GPO website is actually faster than the date when libraries subscribing to the print version of Federal Register receive it.[55]

Furthermore, court opinions are also updated fast on courts' websites. Court usually publishes their slip opinions on their websites, and this is more current than the actual print case reporters. Retrieving court opinions from the websites of various federal courts will be faster and more effective when a new pilot program by the federal judiciary and Government Printing Office is fully implemented.[56] The pilot project plans to combine a dozen federal courts including two U.S. Courts of Appeals, seven U.S. district courts, and three U.S. bankruptcy courts and will allow free pubic access to court opinions. The judiciary's Public Access to Court Electronic Records service (PACER) has also provided free access to federal court opinions free of charge since 2005.[57]

Non-official sites such as Google Scholar's "Legal opinions and journals" and Legal Information Institute at Cornell Law School ("LII") also update its content very quickly. Google engineer Anurag Acharya discloses that its case law database is licensed from a major legal information vendor although he could not name it.[58] When Google Scholar cannot provide the most recent cases, it provides

links to the documents in other websites like LII. LII receives its opinions distributed by the Project Hermes opinion service of the U.S. Supreme Court,[59] which publishes its opinion on the same day as its decision.[60]

Just as it is important to contain the most current information on the websites, it is also important to indicate how current the information contained in a website is in order to help users to decide the reliability of legal information provided. Users need to decide whether they have to use separate updating tools like Shepard's Citation Service or KeyCite. The e-CFR home page clearly indicates how current is the information contained in the database like saying, "e-CFR Data is current as of May 12, 2011."[61] This indication of currency is also closely associated with indication of coverage of a website.

When legal instructors introduce free or low-cost internet resources into their classrooms, they should indicate the coverage of the resources in terms of both time and kinds of sources available. This is because instructors want law students to be efficient without wasting time searching for information not covered by the website. They cannot simply expect student to choose an appropriate database without properly introducing it with coverage information, which is usually hidden somewhere in a website or can be found by calling the domain owner. For example, instructors cannot simply teach that students get government legal documents from GPO's Federal Digital System free of charge. They should know in the beginning what collection and resources are included in the database and what is the coverage for each collection; at least, they may want to start from the "Browse by Collection" page,[62] where they can figure out the kinds of collections available and the coverage of time for each collection.

As far as legal instructors teach law students and legal researchers where to begin and what is the coverage of a website, I think, comprehensiveness of a website cannot be something to consider when they teach it. Comprehensiveness of a website is more likely a subjective, relative standard because even a high-cost subscription database like Westlaw or Lexis cannot include every single legal source. And free or low-cost internet resources holistically make up a good mega database especially when law librarians create a good bibliography or research guide on a topic or a jurisdiction and connect or link the resources together.

**C. Usability**

Among the standards, the usability web-design principle provides a good tool to evaluate the online legal resources. Should we introduce the unusable resource to our students? Users will rely more on an internet website when the website provides more usable design and process. In the introduction of his book, Jakob Nielsen said, "Usability rules the Web. Simply stated, if the customer can't find a product, then he or she will not buy it."[63] As such, if a legal resource is poorly designed and as a result, is not usable, legal researchers will not buy it because they cannot find what they want, or it is a pain to search in the website.

If two websites provides the same kinds of contents in terms of authority, accuracy, coverage, currency, usable websites will be desirable.[64] In this part, I will make efforts to find the meaning of the usability and its elements and to apply it to some of important legal websites.

According to the Research-Based Web Design & Usability Guidelines developed by the U.S. Department of Health and Human Services (HHS),[65] "users define 'usability' as their perception of how consistent, efficient, productive, organized, easy to use, intuitive, and straightforward it is to accomplish tasks within a system." Consistency, scannability, simplicity and visibility, and accessibility are at the core of the usability principle.[66]

Consistency is one of the most powerful usability principles: when things always behave the same, users do not have to worry about what will happen.[67] "Users can have expectations based on their prior experience. . . . users acted on their own expectations even when there were indications on the screen to counter those expectations."[68] There are many studies which found that tasks performed on more consistent interfaces resulted in (1) a reduction in task completion times; (2) reduction in errors; (3) an increase in user satisfaction; and (4) a reduction in learning time.[69]

For example, the U.S. Copyright Office website[70] meets users' expectations, using familiar conventions and thus creating a consistency as search box is provided on top of the screen without distraction. The links in the navigation bar are prominently and consistently displayed in red colors throughout the pages of the website, and the titles of each topic are consistently displayed in bold, dark green colors with no distractions. Finally, the website shows all major options on the homepage and clearly communicates the website's value and purpose. As such, users will easily become familiar with this site, and users, when revisiting this site, will not be confused.

The GPO Access website[71] is an example of a site that lacks consistency. This website does not follow the familiar conventions. There is no typical navigation bars either on the left or top, and the lists are not listed by importance. The search box is strangely located at the bottom using the name "Catalog." Now, the U.S. Government Printing Office, however, is moving their old website into a new platform called the GPO's "Federal Digital System" (hereinafter "FDsys"), which is scheduled to be completed in 2010.[72] The FDsys website is more consistent than the previous one in terms of the location of navigation bars, menus, color scheme, and indications to help users figure out their current location. In other words, the navigation bar on top and the menu in the left are consistent throughout the pages of the website. The blue color navigation system, a 994 pixel wide GPO banner with a dark blue color theme, and a white color text division with #333333 color[73] text are also consistent throughout the site. Additionally, the indication of the user's current location such as "FDsys > Collection Results" is consistently displayed under the GPO banner and before the texts.

Scannability is also important in designing a website.[74] It is well known that most users spend a considerable amount of time scanning rather than reading information on websites.[75] "Skimming instead of reading is a fact of the Web, and it's been confirmed by countless usability studies."[76] Because of the impatience that the internet experience brings about, users do not read texts fully and read only keywords, sentences, and paragraphs which attract their attention.[77] "A wall of text is deadly" for the users who increasingly need an interactive experience, and non-scannable text is "intimidating," "boring," and "painful to read."[78] Well-designed headings help to facilitate both scanning and reading written material.[79] Well-structured documents with levels of headlines, bulleted lists, and highlighting and emphasis on the important words will also increase scannability.[80] Furthermore, we cannot ignore that first time users, or users who have not used a website for a while, will be frustrated with searching a website when the website designer does not understand users' scanning patterns which can be traced by eye tracking instruments like Tobii eye trackers. According to Nielsen, users' reading, scanning patterns look like a letter F.[81]

> Users first read in a horizontal movement, usually across the upper part of the content area. Next, users move down the page a bit and then read across in a second horizontal movement that typically covers a shorter area than the previous movement. Finally, users scan the content's left side in a vertical movement. Sometimes this is a fairly slow and systematic scan that appears as a solid stripe on an eye tracking heatmap. Other times users move faster, creating a spottier heatmap.[82]

The TRAC website[83] is a good example of a web site with a non-scannable text that makes users spend a considerable amount of time figuring out its content. Besides the lack of consistency in terms of color scheme, navigation bar, headings, and contents throughout the site, its sub-websites for DHS, FBI, DEA, IRS, ATF, Reports, and Immigration do not provide meaningful and concise headings for the material hidden somewhere behind each homepage, making users difficult to scan the contents in the website. Bulleted lists and bigger fonts for each paragraph could be adopted to enhance users' usability experience.

Website developers and designers are also making mistakes by creating web pages which are not simple and not visible.[84] Visible and simple searches can be achieved by providing a search box because users often move fast and furiously looking for a search box, which is "the little box where [they] can type."[85] Furthermore, simple and visible searches make users revisit the website; in other words, if users do not find the result with their first query, they are progressively less and less likely to succeed with additional searches.[86] And the first results page, which contains the most important hits on the top of the page, is very important[87] because users almost never look beyond the second page of search results.[88] Research indicates that users tend to stop scanning a list as soon as they see something relevant.[89] Furthermore, in a simple and visible search,

letting users know the scope of their search is important because "users often think they are in a different site area than the one they are actually searching."[90]

The TRAC website described above makes users' usability experience worse by not providing this simple and visible search. While the website allows users to browse various pages, it fails to provide users with a search box. Even in a situation where users are trying to find a pertinent document by browsing pages, it is very difficult for them to find and click a hypertext link because there is no indication as to which words or sentences on each sub-homepage are links. Users will end up finding the links after they hover their cursor over words or sentences and waste some time. Moreover, if the user manages to find a document by clicking more than three times and wants to see more documents from other pages, the website does not make it easy for users to tell where they are unless they go back to the main web page by clicking the browser's back button several times and start to browse again.

Another mistake the Trac Immigration website made is not changing the color of the link users have visited.[91] Changing the color of a link that has been clicked and providing feedback in order to let users know their past and present locations makes it easier to decide where to go next[92] and improves the user's speed of finding information.[93] Providing path and hierarchy information plays the same role. Again, for example, the new FDsys website provides this path and hierarchy information such as "FDsys > Collection Results" and indicates the user's current location.

Overall, one good example of a website, which provides a good usability, is LexisOne.[94] In lexisOne, you can search for federal and state court cases. While users ought to register by creating an account, the service in lexisOne is free. Searching for cases in this website is simple and visible. After the simple introduction of the database coverage, the website provides a search box on top, which users will see for the first time.[95] On the top of the case text, a source for the case and search terms used for getting this case appear. Links for "Back to Search Results," "New Search," and "Next" are located on top left corner of the text. These features make it easier for users to browse the search results and restart a search. The website is also very consistent in aspects such as consistency in the menu on the left and minimized usage of the colors black, grey, and white and use of red underlined hyperlinks. Furthermore, users can simply choose their scope of search on the first page by selecting one from the scroll down menu. In this website, users do not need to go back and forth from page to page when they are searching.

In spite of its beta status, the Public Library of Law[96] website developed by Fastcase did a better job than LexisOne in terms of usability and additionally features broader coverage for links to other sources such as statutes, regulations, court rules, constitutions, and legal forms. The Public Library of Law website provides a simple and visible search; it eliminates distractions and locates a search box in the top middle of the homepage, where users' scanning starts.

Users can easily navigate among sources by simply clicking the type of sources. In a case law database, users will put search terms in the search box and hit the search button next to the box. Users can limit the scope of their search by date and jurisdiction by clicking the "Advanced Options" button under the search box.

On the "search results" pages, the results are listed by relevance, and the percentage of relevance is also provided next to the title of each case, conspicuously underlined with blue-colored letters, which also increases the scannability of the website. Furthermore, the grey-colored text, containing the search terms in a black color and located below the case title, makes it easier to see whether the case is relevant. Full space allocation of the list of search results and the actual text of the case in a white color 72 em[97] wide content container with the #404246 dark grey color background helps users to reduce their researching time by making them concentrate on case results and case text. While LexisOne requires users to pay money to follow hyperlinks provided in the case text, which actually makes users go back and search again, the Public Library of Law website allows users to freely follow the hyperlinks to the authorities provided in a case and see them without searching again. Furthermore, the users' current location is easy to tell by looking at the hierarchical information under the search box. Except for the fact that the website does not allow users to figure out the hyperlinks they have clicked, overall searching in this website is very simple and visible.

The website is also highly consistent throughout the pages. For example, the search boxes for different sources and hierarchical information to help users their current location is placed on the top of a page regardless of which pages users look at.

The recently launched "Legal opinions and journals" database in Google Scholar beta version[98] is also remarkably usable in terms of its simplicity and visibility of design and search. Users will easily find the search box without any distractions underneath the Google scholar logo. The simplicity comes from the fact that users do not need to worry about the type of sources and jurisdictions. First time users, or any users who have not used this website for a long time, will not experience any difficulty on the first homepage of this website. The search box appears on the top of any web page in this website.

After putting search terms and clicking the search button, users will see the easily-scannable display of search results, which is similar to the design of the familiar Google search results. Although the case names are not bulleted, case names are bigger than other texts and are colored and underlined in blue to increase the scannability. Under the case name, case citations are provided in a green color with a smaller font size than the case name and without the underline. Three-lines of black color text containing the search terms follow the citation, and "Cited by . . . ," "Related articles," and "All . . . versions" in a grey color follows the text. Users can easily refine their search results by simply

choosing a date and the type of sources such as articles, federal cases, and state cases from the drop down menus provided on the top of search results page. Users can also simply click the "How cited" link next to the name of the cases to get updated information about a case from the same search results page. Furthermore, the search results page make it easier for users to scan the cases by providing them in a 50 em wide white color container, which helps users fix their eyes to the left side and keep scanning downward.

When users select one of the cases, they will find easily scannable text of a case contained in a 530 pixel wide white color table. Here, users' searching speed will be accelerated because the search terms are bold and highlighted with yellow and light blue colors, and the authorities cited inside the case are underlined and colored in blue. Furthermore, the page numbers are noticeably located next to the text of the case. The footnotes are hyperlinked and provided at the end of the text.

The high usability of the Google Scholar website is also satisfied by its consistency in color scheme, size of fonts, and location of navigation bars and search box. Users will always find the blue-color underlined hyperlinks each webpage, and the black font color and font size for the text are consistent throughout the website. The navigation bar for other Google searches, images, videos, maps, news, e-mail, etc., a search box, and hyperlinks to "Advanced Scholar Search" and "Scholar Preferences" are located on the top of each web page all the time.

Now, it is difficult to argue that the high cost online databases are more desirable for legal research than the free or less expensive databases. This is because it is hard to say that users, paying more for high cost databases, are better able to improve their research effectiveness and to increase their satisfaction.[99] There have been usability concerns about online high cost databases. The analysis of the most heavily used databases[100] will be helpful to understand the usability principle and to apply it to other free or less expensive internet resources. As an example, I would like to briefly analyze Westlaw and Lexis based on the usability principle that I discussed previously.[101] I found some mistakes by Westlaw using the Usability Guidelines developed by the U.S. Department of Health and Human Services (HHS) and the top ten mistakes in web design introduced by Jakob Nielsen.[102]

Westlaw[103] could do a better job in creating simple and visible search functions. First, users searching based on complex legal issues ought to select any database(s), or search for any relevant database(s) first, before formulating their search syntax. However, Westlaw located such functions at the bottom of the screen. Following the F-shaped scanning pattern, [104] first time users like the first year law students, or users who have not used Westlaw for a while, will definitely have a difficult time finding them. Confused by these functions and wasting time in selecting an appropriate database, users will end up failing to choose a proper and less expensive database unless they have already

memorized the databases. The menu provided underneath the search box is actually leading you to select the broad, expensive databases unless users know how to customize the menu. Also, if you use the "search-for-database" function at the lower left of the screen, it actually changes the screen, and you are forced to select one of the databases and wait until a new search screen with a search box shows up.

Westlaw has placed its "Find by citation" and "Search" functions in the most important, first horizontal line, where users start reading and scanning. However, the "Find by citation" function is actually available on other internet websites. And by making users see the search box first, Westlaw compels us to think about the search terms and connectors first before choosing the scope of search, which is required to search. According to Julie M. Jones in the Law Library Journal, we are following the stronger scent of a graphical box.[105] In other words, the database does not allow users enough time to think about the scope of search and the type of the database they are searching by putting the search box first. Setting up an improper or too broad scope of search eventually makes users have wrong results or too many hits and waste their research time. First time users, like the first year law students, are not so highly sophisticated that they can select an appropriate, narrow database or create a good search syntax from the beginning. When the search results give users many hits and searching is not simple and visible, usability concerns become greater. As Nielson suggests, users almost never look beyond the second page of search results.[106] Not only will the users' scanning and reading ability will decrease when they scroll down, but also students will easily give up reading further.

By default, Westlaw enumerates search results reverse-chronologically and alphabetically instead of by relevancy.[107] This means that students ought to look at the last page anyway in order not to miss any relevant case even if there are lots of search results. However, students may not want to read to the end when they have so many hits, and they may miss the important and relevant cases in the latter part of the results.

Another usability problem of Westlaw is that when users click the "authority" link on the text, it opens up a new Browser Window. It may be acceptable if users simply want to check the citation and briefly refer to how the source is cited. However, if users wish to read further by maximizing it, or follow other authorities on the opened authority, they will lose the original search results and lose where they are. Opening new browser windows can be a big mistake.[108] According to Nielson, "opening up new browser windows is like a vacuum cleaner sales person who starts a visit by emptying an ash tray on the customer's carpet" and "it actually disables the *Back* button which is the normal way users return to previous sites."[109] Users may manage to go back to the original results if they simply click the browser back button several times after reading further sources. However, if they follow another link or email or print the source they opened additionally, it may be very hard to go back to the

original list of results. They must click the back buttons several more times, or use research trails.

If these difficulties of using high cost online databases continue, users' efforts to find alternate sources and their tendency to access these resources will increase. Users will be likely to move to the free or low cost internet resources to get the necessary materials when they have citations or party names.

**V. Conclusion**

I have discussed usability, authority, accuracy, currency, and coverage as evaluation standards for the purpose of determining the reliability of free or low-cost internet resources. Legal research instructors can also introduce internet resources, analyzing them based on the evaluation standards. Or they can separately teach the standards and make students to consider before using an internet website. Likewise, these standards should not play as each separate, independent standard. They will be holistically applied to a wide variety of internet resources.

Additionally, these standards are not discussed to sort out bad websites from good, reliable websites. Usable, authentic websites which contain more accurate and current legal information will be more reliable than the ones lack of some aspects. However, sometimes these standards are conflicting with each other. A very usable website which provides a bad search function because it contains unsearchable PDF files can be very authentic website which contains unaltered, complete legal information.[110]

In a forthcoming article, the efforts to add more evaluation standards and increase law students' information literacy for free or low-cost internet resources will be further analyzed. Editorial enhancements like case annotations, perspective of domain owners, etc. will be explored.

**Endnotes**

1. © Jootaek Lee, 2009. This is a development from the presentation at the 2009 CALI Conference for Law School Computing. This article was presented at the Conference on Legal Information: Scholarship and Teaching, held at the Earle Mack School of Law at Drexel University on July 21-23, 2011, as part of its Boulder Summer Conference Series. I extend my gratitude to the participants who provided constructive comments and to the Legal Research Center of the Drexel Law School which held this Conference. I also thank Catherine Biondo, an assistant law librarian at the Northeastern School of Law Library for editing this article.
2. © Jootaek Lee, 2009. This is a development from the presentation at the 2009 CALI Conference for Law School Computing. This article was presented at the Conference on Legal Information: Scholarship and Teaching, held at the Earle Mack School of Law at Drexel University on

July 21-23, 2011, as part of its Boulder Summer Conference Series. I extend my gratitude to the participants who provided constructive comments and to the Legal Research Center of the Drexel Law School which held this Conference. I also thank Catherine Biondo, an assistant law librarian at the Northeastern School of Law Library for editing this article. Jootaek Lee, Senior Law Librarian (Research Librarian for Foreign, Comparative, and International Law), Northeastern University School of Law, Boston, Massachusetts. Robert C. Berring, *Legal Research and the World of Thinkable Thoughts*, 2 J. APP. PRAC. & PROCESS 305, 311 (2000).

3. Robert C. Berring, *Legal Information and the Search for Cognitive Authority*, 88 Cal. L. Rev. 1673, 1701 (2000).

4. ANNE L. MCDONALD, LYNDA THOMPSON & MARY E. ZIEBARTH, COMMUNICATING WITH LEGAL DATA BASES: TERMS AND ABBREVIATIONS FOR THE LEGAL RESEARCHER 1 (1987).

5. *See, e.g.*, JUSTIA, http://www.justia.com (last visited May. 18, 2011); FINDLAW FOR LEGAL PROFESSIONALS, http://lp.findlaw.com (last visited May 18, 2011); GPO ACCESS, http://www.gpoaccess.gov (last visited May 18, 2011), FDSYS: GPO'S FEDERAL DIGITAL SYSTEM, http://www.gpo.gov/fdsys (last visited May 18, 2011); LEXISONE, http://law.lexisnexis.com/webcenters/lexisone (last visited May 18, 2011); GOOGLE SCHOLAR: LEGAL OPINIONS AND JOURNALS, http://scholar.google.com (last visited May 18, 2011); LEGAL INFORMATION INSTITUTE AT CORNELL LAW SCHOOL, http://www.law.cornell.edu (last visited May 18, 2011); THE PUBLIC LIBRARY OF LAW, http://www.plol.org/Pages/Search.aspx (last visited May 18, 2011). Examples for less expensive databases are Fastcase, Loislaw, Casemaker Online Law Library, etc.

6. For example, according to the Fulltext Sources Online, the number of "Open Access Journals" increased from 1,435 in 2005 to 3,834 in January, 2010, and the number of URLs with free archives increased up to 14,435 in January, 2010 from 638 in January 1998. FULLTEXT SOURCES ONLINE xx (Mary B. Glose et al. eds., Information Today, Inc. 2010). Furthermore, the Fulltext Sources Online as of January, 2010 indicates there are 663 law journals and 350 law reviews for full text. *Id.* at xix.

7. This can also be inferred from the fact that research guides on free internet legal resources are introduced and available through most law library websites. *See e.g. Free Law Online / Internet Legal Resources*, MARIAN GOULD GALLAGHER LAW LIBRARY, UNI. OF WASH. SCHOOL OF LAW, http://lib.law.washington.edu/research/research.html (last visited May 18, 2011); *Free & Low Cost Legal Research*, GEORGETOWN LAW LIBRARY, http://www.ll.georgetown.edu/guides/freelowcost.cfm (last

visited May 18, 2011); Legal *Research on the Web*, DUKE LAW LIBRARY & TECHNOLOGY, http://www.law.duke.edu/lib/researchguides/intresearch (last visited May 18, 2011).

8. *See generally* Ellie Margolis, *Surfin' Safari—Why Competent Lawyers Should Research on the Web*, 10 Yale J. L. & Tech. 82 (2007). The author says, "[I]t can safely be said that research via the internet is a standard technique used by a majority of lawyers in a majority of jurisdictions through the country." *Id.* at 107.
9. LEGAL TECH. RES. CTR., AM. BAR ASS'N, 2008 LEGAL TECHNOLOGY SURVEY REPORT V-1, V-21 (2008).
10. *Id.* at V-23.
11. *Id.* at V-23-34.
12. *See Id.*
13. *Id.* at V-23-41.
14. 'Internet legal research' and 'online legal research' is used interchangeably, meaning legal research using free or less expensive internet resources instead of high-cost subscription databases.
15. Margolis, *Supra* note 7, at 116 (citing John J. Hasko, *Persuasion in the Court: Nonlegal Materials in U.S. Supreme Court Opinion*, 94 Law Libr. J. 427, 441-53 (2002)).
16. *Id.*
17. Elizabeth Chambliss, *When Do Facts Persuade? Some Thoughts on the Market for "Empirical Legal Studies,"* 71 LAW AND CONTEMPORARY PROBLEMS 17, 20-21(2008).
18. *Law Journals: Submissions and Ranking*, WASHINGTON AND LEE UNIVERSITY SCHOOL OF LAW, http://lawlib.wlu.edu/LJ/index.aspx (last visited May 18, 2011). Social Sciences and the Law: 1 out of 24 (combined impact and citations); Refereed Law Journals: 1 out of 504 (currency factor*); Refereed Law Journals: 2 out of 504 (combined impact and citations); All Law Journals: 11 out of 1522 (currency factor*) as of 2008. *Id.*
19. Chambliss, *supra* note 16, at 31 (quoting *Journal of Empirical Legal Studies*, http://www.wiley.com/bw/journal.asp?ref=1740-1453).
20. Stephen C. Weiss, *Searching for Law on the Internet*, 33 TRIAL 78, 78 (1997).
21. THEODOR HERMAN, HOW TO RESEARCH LESS AND FIND MORE: THE ESSENTIAL GUIDE TO COMPUTER ASSISTED LEGAL RESEARCH 73 (1996).

22. Margolis, *Supra* note 7, at 98 (citing as examples *Salahuddin v. Coughlin*, 999 F. Supp. 526, 529 (S.D.N.Y. 1998); *Gosnell v. Rentokil*, 175 F.R.D. 508, 510 n.1 (N.D. Ill. 1997); *Brown v. Lincoln Towing Serv.*, No. 88C0831, 1988 WL 93950 (N.D. Ill. 1988); *Pravic v. U.S. Indus.-Clearing*, 109 F.R.D. 620, 623 (E.D. Mich. 1986); *Blake v. Nat'l Cas. Co.*, 607 F. Supp. 189, 191 (C.D.Ca. 1984)).

23. DIANA BOTLUK, THE LEGAL LIST: RESEARCH ON THE INTERNET 6 (2008).

24. *Id.*

25. Richard A. Danner, S. Blair Kauffman & John G. Palfrey, *The Twenty-First Century Law Library*: *Marian Parker's Comment*, 101 LAW LIBRARY JOURNAL 143, 155 (2009).

26. According to Experian, one of leading information services company, as of February, 2011 is Google. Google accounts for 67.95 percent of all U.S. searches for the month of January, 2011. *See Experian Hitwise Reports Bing Searches Increase 21 Percent in January 2011,* EXPERIAN HITWISE, http://www.hitwise.com/us/press-center/press-releases/bing-searches-increase-twenty-one-percent (last visited May 6, 2011).

27. *See* Anurag Acharya, *Finding the Laws that Govern Us*, OFFICIAL GOOGLE BLOG (Nov. 17, 2009), http://googleblog.blogspot.com/2009/11/finding-laws-that-govern-us.html.

28. "Currently, Google Scholar allows you to search and read opinions for US state appellate and supreme court cases since 1950, US federal district, appellate, tax and bankruptcy courts since 1923 and US Supreme Court cases since 1791 (please check back periodically for updates to coverage information). In addition, it includes citations for cases cited by indexed opinions or journal articles which allows you to find influential cases (usually older or international) which are not yet online or publicly available. *Legal opinions in Google Scholar are provided for informational purposes only and should not be relied on as a substitute for legal advice from a licensed lawyer. Google does not warrant that the information is complete or accurate.*" *Help: Which court opinions do you include?*, GOOGLE SCHOLAR, http://scholar.google.com/intl/en/scholar/help.html (last visited May 18, 2011).

29. Amanda M. Runyon, *The Effect of Economics and Electronic Resources*, 101 LAW LIBRARY JOURNAL 177, 198-99 (2009).

30. Law.Gov, *A Nations of Laws: Report*, http://resource.org/law.gov/index.html (last visited May 18, 2011).

31. Roberta I. Shaffer, *Holiday Letter from the Law Library of Congress*, Jan.5, 2010, www.loc.gov/law/news/holiday_letter.pdf.

32. *See* Am. Assoc. of Law Libraries, *State-by-State Report on Authentication of Online Legal Resources Full Report*, (Mar. 2007), http://www.aallnet.org/aallwash/authen_rprt/AuthenFinal Report.pdf.

33. THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION R. 18.2, at 165 (Columbia Law Review Ass'n et al. eds., 19th ed. 2010).

34. Fed. R. Evid. 901(a).

35. *Final Authentication White Paper,* GOV'T PRINTING OFFICE, 3 (Oct. 13, 2005), http://www.gpo.gov/pdfs/authentication/authenticationwhitepaperfinal.pdf.

36. *Id.*

37. *Id.*

38. Kelly Kunsch, *Diogenes Wanders the Superhighway: A Proposal for Authentication of Publicly Disseminated Documents on the Internet*, 20 SEATTLE U. L. REV. 749, 760-70 (1997).

39. *Id.* at 760-70. Authentication through domain names of internet websites or making official domain registry for legal information websites may not be possible because of the lack of funds available. Since this article was published in 1997, the authentication method he suggested has not been realized. However, his idea is similar and commensurate with the idea of creating a national inventory of authentic legal information supported by the American Association of Law Libraries. Since 2007 when the Executive Board of American Association of Law Libraries adopted a policy to warrant the access to the publicly available government information, law librarians have been making efforts for the authentication and preservation of official legal sources, creating a nation inventory of official legal sources published on each state's official websites. *AALL State Working Groups to Ensure Access to Electronic Legal Information*, AM. ASS'N OF LAW LIBRARIES, http://www.aallnet.org/Documents/Government-Relations/Advocacy-Toolkit/stateworkinggroups.pdf (last visited May 16, 2011).

40. THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION R. 18.2.1, at 165-67 (Columbia Law Review Ass'n et al. eds., 19th ed. 2010).

41. *Law.gov Principles and Declarations*, LAW.GOV: AMERICA'S OPERATING SYSTEM, OPEN SOURCE http://public.resource.org/law.gov (last visited May 12th, 2011). This trend is commensurate with the recent adoption

and approval by the Uniform Law Commission (ULC) of The Uniform Electronic Legal Material Act at its 120th Annual Meeting in Vail, Colorado, and tells a state "official publisher" to authenticate state legal materials. *Uniform Electronic Legal Material Act Approved*, UNIFORM LAW COMMISSION, July 12, 2011, http://www.nccusl.org/NewsDetail.aspx?title=Uniform%20Electronic%20Legal%20Material%20Act%20Approved.

42. Getty Petroleum Mktg., Inc. v. Capital Terminal Co., 391 F.3d 312, 324 n.17 (1st Cir. 2004).
43. *Id.*
44. Kelly Kunsch, *Supra* note 37, at 779. The burden of disproving authenticity of the information contained shifts from publishers and vendors to the domain owner of the website. *Id.*
45. *Getty Petroleum*, 391 F.3d at 325.
46. Fed. R. Evid. 901(b)(7).
47. THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION R. 18.3, at 171 (Columbia Law Review Ass'n et al. eds., 19th ed. 2010).
48. *See e.g., Federal Digital System: America's Government Authentic System*, U.S. GOV'T PRINTING OFFICE http://www.gpo.gov/fdsys/search/home.action (last visited May 12, 2011); ONLINE SUNSHINE, http://www.leg.state.fl.us (last visited May 12, 2011).
49. *See e.g. 2010 Term Opinions of the Court*, U.S., http://www.supremecourt.gov/opinions/slipopinions.aspx (last visited May 12, 2011). The website only says, "In case of discrepancies between the print and electronic versions of a slip opinion, the print version controls. In case of discrepancies between the slip opinion and any later official version of the opinion, the later version controls." *Id*.
50. *See Authentication Information*, U.S. GOV'T PRINTING OFFICE, http://www.gpo.gov/authentication/index.htm (last visited May 12, 2011).
51. Kelly Kunsch, *Supra* note 37, at 756; Wendy Scott, *Evaluating & Authenticating Legal Web Resources: A Practical Guide for Attorneys*, 52 SYRACUSE L. REV. 1185, 1196-97 (2002).
52. *See e.g. The Moving Wall*, JSTOR, http://about.jstor.org/content-collections/moving-wall (last visited May 16, 2011).
53. When I compared, e-CFR was published five days faster than CFR in Westlaw.

54. *See Federal Register: Today's Issue of the Federal Register*, U.S. Government Printing Office, http://www.gpo.gov/fdsys/browse/collection.action?collection Code=FR (last visited May 16, 2011).

55. The libraries usually get the print version about ten days later after its publication.

56. Press Release, The Administrative Office of U.S. Courts, New Pilot Project Will Enhance Public Access to Federal Court Opinions (May 04, 2011), http://www.uscourts.gov/News/NewsView/11-05-04/New_ Pilot_Project_Will_Enhance_Public_Access_to_Federal_Court_Opinion s.aspx.

57. Users can get free opinions by creating a free Pacer Account and going through "Civil and Criminal Records" under the "Reports" menu on the individual Case management/Electronic Case Files (CM/ECF) site of each federal court. On the PACER website, users should go through "Court Links" to reach individual CM/ECF site on the left-side menu instead of PACER Case locator link. *Individual Court Pacer Sites*, PACER, http://www.pacer.gov/cgi-bin/links.pl (last visited May16, 2011).

58. *Google SLOJ Details Emerge on Law Librarian Blog Talk Radio*, LAW LIBRARIAN BLOG (Dec. 8, 2009), http://lawprofessors.typepad.com/law_librarian_blog/2009/12/ google-sloj-details-emerge-on-law-librarian-blog-talk-radio.html.

59. *LII Collection: US Supreme Court Decisions: Extent and currency*, LEGAL INFORMATION INSTITUTE http://www.law.cornell.edu/supct/ supremes.htm (last visited May 16, 2011).

60. Lexis, Westlaw, VersusLaw, etc. also subscribe to the Court's Project Hermes opinion service. *See Where to Obtain Supreme Court Opinions*, Supreme Court of the United States, http://www.supremecourt.gov/opinions/obtainopinions.aspx (last visited May 17, 2011).

61. *See Electronic Code of Federal Regulations*, GPO ACCESS, http://www.gpoaccess.gov/ecfr (last visited May 16, 2011).

62. *Browse Government Publications,* FDSYS: GPO'S FEDERAL DIGITAL SYSTEM http://www.gpo.gov/fdsys/browse/collectiontab.action?null&bread= true (last visited May 17, 2011).

63. JAKOB NIELSEN, DESIGNING WEB USABILITY 9 (2000).

64. Christof van Nimwegen and Here van Oostendorp suggest that the websites, that have interfaces internalizing knowledge, are not so much effective in constructing learning schema and enhancing users' performance as the websites that have interfaces externalizing

knowledge. Christof van Nimwegen and Herre van Oostendorp, *The Questionable Impact of an Assisting Interface on Performance in Transfer Situations*, 39 INT'L J. OF INDUS. ERGONOMICS 501, 507 (2009). However, standards that distinguish between internalized websites and externalized websites are different from the usability standards.

65. U.S. DEP'T OF HEALTH AND HUMAN SERVS., RESEARCH-BASED WEB DESIGN & USABILITY GUIDELINES DEVELOPED 3 (2006).
66. *See generally* NIELSEN, *Supra* Note 62.
67. They *know* what will happen based on earlier experience. Jakob Nielsen, *Top Ten Mistakes in Web Design*, June 5, 2009, http://www.useit.com/alertbox/9605.html.
68. U.S. DEP'T OF HEALTH AND HUMAN SERVS., *Supra* Note 64, at 3.
69. *Id.* at 103.
70. *See* U.S. COPYRIGHT OFFICE, http://www.copyright.gov (last visited May 18, 2011).
71. *See* GPO ACCESS, http://www.gpoaccess.gov (last visited May 18, 2011).
72. *See* FDSYS: GPO'S FEDERAL DIGITAL SYSTEM, http://www.gpo.gov/fdsys/search/home.action (last visited May 18, 2011).
73. Web color #333333 is close to the dark grey color.
74. Jakob Nielsen, *Top Ten Mistakes in Web Design* (2007), http://www.useit.com/alertbox/9605.html.(last visited May 18, 2011).
75. U.S. DEP'T OF HEALTH AND HUMAN SERVS., *Supra* Note 64, at 76, 171.
76. NIELSEN, *Supra* Note 62, at 104.
77. *Id.*
78. Nielsen, *Supra* Note 73. *See also* NIELSEN, *Supra* Note 62, at 104.
79. U.S. DEP'T OF HEALTH AND HUMAN SERVS., *Supra* Note 64, at 76, 171.
80. NIELSEN, *Supra* Note 62, at 105-06.
81. Nielsen, *F-Shaped Pattern for Reading Web Content*, June 5, 2009, http://www.useit.com/alertbox/reading_pattern.html
82. *Id.*
83. *See* TRAC Reports, Inc., http://trac.syr.edu (last visited May 18, 2011).
84. Nielsen, *Supra* Note 73.
85. Jakob Nielsen, *Search: Visible and Simple*, June 5, 2009, http://www.useit.com/alertbox/20010513.html.

86. *Id.*
87. *Id.*
88. *Id.*
89. U.S. DEP'T OF HEALTH AND HUMAN SERVS., *Supra* Note 64, at 113.
90. Nielsen, *Supra* Note 84.
91. *See* Nielsen, *Supra* Note 73.
92. U.S. DEP'T OF HEALTH AND HUMAN SERVS., *Supra* Note 64, at 62.
93. *Id.* at 92.
94. *See* NEXISONE: SEARCH FREE CASE LAW, http://www.lexisone.com/lx1/caselaw/freecaselaw (last visited May 18, 2011).
95. *See* Nielsen, *Supra* Note 84.
96. *See* PLOL: THE PUBLIC LIBRARY OF LAW, http://www.plol.org/Pages/Search.aspx (last visited May 18, 2011).
97. 1 em is equal to the current font size; 2 em means 2 times the size of the current font.
98. *See* GOOGLE SCHOLAR, http://scholar.google.com (last visited May 11, 2011).
99. *See* U.S. DEP'T OF HEALTH AND HUMAN SERVS., *Supra* Note 64, at 103.
100. *See generally* LEGAL TECH. RES. CTR., *Supra* Note 8.
101. While I was writing this article in late January 2010, there was an announcement by Westlaw about "sweeping changes"; specifically, Westlaw announced that their new product, Westlaw Next, would be launched on February 1, 2010. Ashlee Vance, *Leal Sites Plan Revamps as Rivals Undercut Price*, N.Y. TIMES, January 25, 2010, at B5. However, this analysis based on usability will still benefit the legal researchers in analyzing other online legal resources and databases and in introducing them to law students. According to Jakob Nielson, "web usability changes less rapidly than web technology, so the methods and concepts. . . will be useful . . . for many years . . . ." Nielson, *Supra* Note 62, at 12.
102. Nielsen, *Supra* Note 72. Ten mistakes are bad search, PDF files for online reading, not changing the color of visited links, non-scannable text, fixed font size, page titles with low search engine visibility, anything that looks like an advertisement, violating design conventions, opening new browser windows, and not answering users' questions. *Id.*

103. For analytical purposes, I used the 'Law School' tab which most law students starting to learn Westlaw use for their legal research class. This tab is set up as a default by Westlaw.

104. *See* Nielsen, *Supra* Note 80.

105. Julie M. Jones, *Not Just Key Numbers and Keywords Anymore: How user Interface Design Affects Legal Research*, 101 LAW LIBRARY JOURNAL 7, 18 (2009).

106. *See* Nielsen, *Supra* Note 73.

107. This function can be changed by the "Preferences" function, which appears in small white color letters on the top right corner of the pages; however, changing setting for search results using this "Preferences" function is not easy for the first time users or law students.

108. Nielsen, *Supra* Note 73.

109. *Id.*

110. For this reason, many websites are providing PDF and other types of files at the same time.

# OPEN ACCESS REVOLUTION IN LEGAL RESEARCH: *DIRA NECESSITAS*[1]

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**Abstract**

Any academic research which has not been shared with others to the extreme possible extent is a lost opportunity both in terms of its immediate impact and its reference value for the future researchers. Unfortunately, most of the legal research, particularly in India, is disseminated today by publishing it in law journals which have very limited circulation. Such a trend is utterly deficient to meet the main purpose of research, viz. maximizing knowledge. The internet boom in the 1990s had a galvanizing impact on research as a whole – the legal profession became poised to disseminate limitless levels of information. In such a prevailing condition, it became imperative to strengthen our efforts towards Open Access (OA) publications. This paper attempts to provide a jurisprudential basis behind such initiative and visualize the phenomenon from rights-perspective. It analyzes the evolution of the OA publishing movement and its impact on the traditional scholarly model. It reviews the development worldwide and also in the Indian context, essentially in the post-Budapest Initiative era; the challenges and opportunities faced by the intellectual circles in the country. It surveys the legal information environment and depicts a grim picture of current state of affairs. As a matter of fact, only few top-tier Law Schools in India have OA journals which are far from being sufficient. Most of the OA publishing portals do not command enough credibility for various reasons. The legal intelligentsia in India has also failed to give serious thought to this problem unlike their counterparts in the West. They even lag way behind in terms of action when compared to some other disciplines in India. While attempting a comparative study on the effectiveness of book based and internet based research in the age of information and technology, the authors expressed their dismay over the limited penetration and consequent effect of the expensive commercial online databases. A realist National Open Access Policy is the cry of the day. Hence, a revolution in OA publication in legal research is overdue and it would have far reaching consequences – not only to the legal academic scholars but also to lawyers, judges, policy makers and even the litigants. The prevailing system of exploring doctoral theses through INFLIBNET is commendable yet not enough; all the research projects undertaken by the University scholars shall mandatorily be hosted on their respective University OA repositories developed individually or jointly. The onus of accomplishing the mission of maximizing the spread of

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legal knowledge largely falls on the law schools and the law libraries countrywide. They should rise to the occasion and join hands to the furtherance of the cause. The key therefore is constant advocacy.

**Introduction**

Once late Benjamin Disraeli, Prime Minister of Britain remarked: "*The more extensive a man's knowledge of what has been done, the greater will be his power of knowing what to do*". There can hardly be any disagreement with this opinion. Knowledge is a common property available to all like natural resources. However, the irony is natural resources stock dwindles when shared, while knowledge wants to be shared and when shared it grows! Any academic research which has not been shared with others to the extreme possible extent is a lost opportunity both in terms of its immediate impact and its reference value for the future researchers. Natural resources require strong preservative action, self-governing mechanisms, for its sustainability, on the other hand, we have enclosed, prevented and copyrighted knowledge to an unsustainable and self-degrading commodity. We have allowed much of the knowledge produced by scholars around the world in the past few centuries and recorded in copyrighted journals and have made them available to limited fortunate souls. We have protected them as 'Holy Grail' forbidden for public consumption. We have allowed the copyright laws to protect the interests of publishers, who are intermediaries in reaching the knowledge to others, rather than protect the interests of the knowledge creators, viz. the authors of research papers, who want to give away their knowledge for free. The past two decades have seen the emergence of a movement that seeks to restore the knowledge commons back to the knowledge creators, through facilitating open access (OA). Although the OA movement began before the advent of the Internet, it would not be an exaggeration to say that it would not have grown but for the emergence and widespread use of the Internet [Arunachalam, "Open Access" 271].

Not surprisingly, most of the legal research, particularly in India, is disseminated today by publishing it in law journals which have very limited circulation. Such a trend is utterly deficient to meet the main purpose of research, viz. maximizing knowledge. The legal intelligentsia in India has also failed to give serious thought to this problem unlike their counterparts in the West. They even lag way behind in terms of action when compared to some other disciplines in India.

This paper reviews and analyzes the evolution of OA movement in serial publications worldwide and its impact in India. It discusses the current state of affairs in Indian academics in general and law in particular. It highlights the challenges which the traditional publishing model poses to the OA movement. Drawing inspiration from some of the novel steps taken by some of the western law schools, it proposes some initiates for better and wider dissemination of scholarly writings without any fetters of copyright laws.

**What is Open Access?**

OA deals with free access to and reuse of scholarly works. To date it has been primarily concerned with scholarly journal articles; however, digital books, electronic theses and dissertations, and research data have been of growing concern. So, generally speaking, OA is free online availability of digital contents, scholarly journal articles, research results which authors publish without any economic consideration and is based on the philosophy of creating a 'perfect world' where knowledge is free and easily accessible. OA operates within the legal framework and authors own the original copyrights to for their work. Authors can transfer the rights to publishers to post the work on the web or else can retain the rights to post their work on the archives.

In fact, open access is a step ahead of "Free Access" which removes just the price barriers by providing free access to end users. Under OA, the end user not only has free access to the content but also have the right to further distribute the content [Keisham and Sophiarani 206].

Multiple definitions of OA publishing exist. Commonly known as the three Bs, the Budapest Open Access Initiative (February 2002), Bethesda Statement on Open Access Publishing (June 2003) and Berlin Declaration on Open Access to Knowledge in the Sciences and Humanities (October 2003) public statements represent the most highly regarded definitions of OA, and all agree on the essentials. Though differing slightly, the statements essentially note that OA allows users to read, download, copy, distribute, print, search, or link to the full text of works, permitting use for any lawful purpose, as long as Internet access to the material is possible. OA functions within current copyright law by allowing authors to either retain the right to post their papers on institutional servers or transfer rights to publishers who allow free access to their work and is not applicable to content for which authors expect financial compensation [Albert 253 – 54].

Following two commonly discussed means for achieving the OA goal articulated in the Budapest Open Access, OA may be categorized into two categories [Donovan and Watson 7]:

(1) Establishment of a new generation of online OA journals that conduct peer review yet do not charge subscription or access fees (known as the 'gold' road); and

(2) Author self-archiving and/or commitment to deposit a digital copy of a publication to a publicly accessible website or institutional repository (known as the 'green' road). It may be possible after traditional publication, and publishers permitting free access to the electronic content after an embargo period.

Keisham and Sophiarani succinctly summed up the salient features of OA in the following points [206]:

(1) OA literature is digital, free of charge and free of copyright;

(2) OA is compatible with copyright, revenue, print, preservation, prestige, career advancement, indexing and supportive services associated with conventional scholarly literature;

(3) OA campaign focuses on the literature that authors give to the world without expectation of payment;

(4) OA is compatible with peer review and all the major OA initiatives for scholarly literature insist on its importance.

**Development of OA: Initiatives of the Western Scholarly World**

Scientific community, consisting of scholars from science, technology and medicine (STM) field, has been in the forefront of this OA movement. The scientific journal was begun in 1665 to enable researchers to share their work quickly and widely and to establish the priority of researchers investigating the same problem. Because authors received intrinsic rewards from publishing, no financial remuneration was awarded. Early journals could not afford to pay authors anyway [Albert 255].

The advent of the Internet made it possible for research to be shared in entirely new ways. Physicist Paul Ginsparg founded the Internet's first scientific preprint service, arXiv, in 1991, allowing scientists to share ideas prior to publication. Three years later, cognitive science professor Steven Harnad started advocating before researchers to immediately start self-archiving—depositing papers in a publicly accessible, Internet-based archive—to maximize exposure to their work and eliminate subscription price barriers hampering research sharing worldwide. Harnad's proposal led to extensive debate and influenced subsequent events leading to the OA movement of today. The biomedical science community joined the act in 1999 with the implementation of E-Biomed, the brainchild of Nobel laureate and then-director of the US National Institutes of Health (NIH), Harold Varmus [Albert 255 – 56]. Because of such tireless efforts from various scholars from the STM world, the OA movement has intensified in the recent times, setting numerous significant milestones.

In the field of law, the Hermes Project at Case Western Reserve University, in collaboration with the U.S. Supreme Court, was the first pioneering project to make use of the Internet. Starting in May 1990, this project allowed for some *avant–garde* network users interested in law to access decisions rendered in the highest American court. Devoid of search engines, requirement of knowing the file number of the judgement in advance, existence of separate elements of judgment in separate files made Hermes rather difficult to use. In retrospect, the Hermes Project was more of an interesting initial attempt at using the Internet for the redistribution of legal information rather than being a successful system to reach the general public [Poulin].

Innovative use of internet in delivering legal information online in a user-friendly manner on a wide scale was accomplished through the establishment of a non-profit group, the Legal Information Institute (LII) at Cornell Law School by Thomas R. Bruce and Peter W. Martin in 1992 with "*the conviction that digital technology should facilitate a quantum shift in the distribution of legal information and also make it possible for a university law school to become a serious electronic publisher of its own research*" [Martin]. The objective of LII is to publish law online, for free; create materials that help people understand law; and explore new technologies that make it easier for people to find the law [LII About]. LII electronically publishes a plethora of primary legal materials including the U.S. Code, U.S. Supreme Court opinions, Federal Rules and Regulations. LII also provides access to other national and international sources, such as treaties and United Nations materials [LII Legal Collections]. It soon inspired similar initiatives to take place across the globe. In fact, the Australasian Legal Information Institute (AustLII) was the first LII to realize the full potential of the ideas put forth by the Cornell team. AustLII became the first Legal Information Institute to offer comprehensive national legal collections open accessible to all [Poulin].

In a significant international development in open access to legal information, in October 2002, delegates to the fourth Law via Internet Conference in Montreal issued a *Declaration on Public Access to Law* stating that [Montreal Declaration]:

- Public legal information from all countries and international institutions is part of the common heritage of humanity. Maximising access to this information promotes justice and the rule of law;
- Public legal information is digital common property and should be accessible to all on a non-profit basis and free of charge;
- Organisations such as legal information institutes have the right to publish public legal information and the government bodies that create or control that information should provide access to it so that it can be published by other parties.

The initial Montreal Declaration was issued by representatives of LIIs from eight areas of the world. It was amended at two later meetings of the LIIs, most significantly in 2003, when the title of the declaration was changed to call for "*free*," rather than for "*public*" access to law, and the qualification "*where possible*" was deleted from the original statement that public legal information "*should be accessible to all on a non-profit basis and, where possible, free of charge* [Danner 360]." Today, various national and regional LIIs are linked from the web site of the World Legal Information Institute (WLII) which holds 1230 databases from 123 jurisdictions via 14 LIIs. Although the LII initiatives largely started to disseminate primary legal information; at present, WLII acts as a repository of various Law Journals worldwide including journals from Indian Law Schools [International Library].

The Social Science Research Network (SSRN), the most popular platform among law faculty for self-dissemination of their written works, was founded in 1994 (Donovan and Watson 28). The Ranking Web of World Repositories has ranked SSRN as No. 1 among its counterparts [Top Repositories]. For law schools, the open access movement surfaced as a force of major importance with the announcement of two major initiatives in 2008. First, on May 7, 2008, the Harvard Law School faculty voted unanimously to make their scholarship freely available in an online repository. With this action, Harvard's became the first law school to make an institutional commitment to open access for its faculty's scholarly publications [Harvard "Yes"].

The words of the motion are self-explanatory echoing their strong commitment to the cause of free knowledge. It reads [Harvard "motion"]:

> *"...[E]ach Faculty member grants to the President and Fellows a nonexclusive, irrevocable, worldwide license to exercise any and all rights under copyright relating to each of his or her scholarly articles, in any medium, and to authorize others to do the same, provided that the articles are not sold for a profit...."*

The second milestone was achieved soon thereafter when, on November 7, 2008, the directors of the several major law libraries met in Durham, North Carolina at the Duke Law School.[2] The talks resulted in the *Durham Statement on Open Access to Legal Scholarship*, promulgated in February 2009, which calls for all law schools (1) to stop publishing their journals in print format and to rely instead on electronic publication coupled with (2) a commitment to keep the electronic versions available in "*stable, open, digital formats*" [Durham Statement]. Since the Statement was issued increased publication of law journals is witnessed in openly available electronic formats.

OA is also at the heart of UNESCO's activities to build knowledge societies through the use of information and communication technology (ICT). UNESCO views the subject from right-based perspective. According to its philosophy, OA is the provision of free access to peer-reviewed, scholarly and research information to all. It requires that rights holders grant worldwide irrevocable *right to copy, use, distribute, transmit and make derivative works* in any format for any lawful activities with proper attribution to the original author. OA uses ICT to increase and enhance the dissemination of scholarship. *OA is about freedom, flexibility and fairness*. In fact, UNESCO hosted a meeting of experts on OA on 22 and 23 November 2011, at its Headquarters in Paris, to discuss how to operationalize the UNESCO Open Access strategy approved by the UNESCO Executive Board at its 187th session and further adopted by the 36th session of the General Conference [UNESCO "Open"]. The meeting resulted in the launch of Global Open Access Portal which provides an overview of the framework surrounding OA in UNESCO Member States by focusing on the critical success factors for effectively implementing OA; each country's strengths and opportunities for further developments; where mandates for institutional

deposits and funding organization have been put into place; potential partners at the national and regional level; and funding, advocacy, and support organizations throughout the world [UNESCO "Global"].

**Jurisprudential Justification behind Open Access**

Lon Fuller, in much revered book on Jurisprudence, *The Morality of Law*, brings home the imaginative ruler 'Rex' who with a reformist zeal set out to reform the legal system of his country which was in doldrums. One of the steps he resolved to undertake was to draft a comprehensive code employing his intellectual powers solitarily. While he was able to bring out a fairly long document and announced that in future he would be governed by its principles in deciding cases; but he decreed that the Code was to remain secret known only to himself and his scrivener. The resentment of his subjects was such that the plan had to be abandoned [Fuller 34 – 35]. Fuller observes that Rex's "*failure to publicize, or at least to make available to the affected party, the rules he is expected to observe*" defeated his noble intention [39]. Thus, according to Fuller, in a properly regarded legal system, one of the eight "*inner morality*" or inner characters of law is that it should be "*published*".

What is noteworthy is the fact that the Montreal Declaration emphasizes on the free access to "*public legal information*," which is defined in the declaration to be:

> *"...[L]egal information produced by public bodies that have a duty to produce law and make it public. It includes primary sources of law, such as legislation, case law and treaties, as well as various secondary (interpretative) public sources, such as reports on preparatory work and law reform, and resulting from boards of inquiry. It also includes legal documents created as a result of public funding." (Emphasis provided by the authors)*

This definition has a significant bearing in common law countries such as India, where legal scholarship is usually classified as 'secondary' sources which includes writings and commentaries by scholars, and is distinguished from the 'primary' sources of law issued by bodies with law- or rule-making authority: legislatures, courts, and administrative agencies. Secondary authority cannot bind a court; nevertheless, they can be cited to persuade the court of the soundness of an argument.

Hence, it would be naive on our part to presume that law in India would only develop with primary texts of legal provisions be available to the legal experts, researchers and common people at large. Unless interpretations and opinions of various legal scholars are available to us, our understanding of law will remain incomplete forever. When the Government has introduced free-laptop scheme for the district court level judges, the initiative would become sterile unless adequately supplemented by properly-indexed, easy-to-search legal information including scholarly works.

The expression "*freedom of speech and expression*" in Article 19(1)(a) of the Constitution of India has been enlarged by the Supreme Court of India in several cases to include the right to acquire information and disseminate the same [CAB Case]. It includes the right to communicate it through any available media whether print or electronic or audio-visual. This freedom includes the freedom to communicate or circulate one's own opinion without interference to as large a population in the country, as well as abroad, as is possible to reach. Without adequate information, a person cannot form an informed opinion. Thus, right to know has been considered as a concomitant right to right to speak. And such an interpretation is consistent with Article 19 of the Universal Declaration of Human Rights, 1948 [UDHR] which encapsulates right "*to seek, receive and impart information and ideas through any media and regardless of frontiers*." (Emphasis provided by the authors)

If one accepts that all scholarship, regardless of academic discipline, is inherently built upon the foundation established by earlier scholars, then it follows that the more widespread and accessible scholarly information is, the more quickly and efficiently scholarship can advance. Because of the infinitely varied uses to which this information can be put, many of them directly impacting basic quality of life issues, the intellectual duty of the scholar to communicate can be argued to be mirrored by a human 'right to know', which "*has a claim on our humanity that stands with other basic rights, whether to life, liberty, justice, or respect. More than that, access to knowledge is a human right that is closely associated with the ability to defend, as well as to advocate for, other rights* [Willinsky 143]."

This 'right to know', if it is acknowledged to exist, would demand the implementation of OA initiatives. Anything less amounts to willful withholding of the knowledge created within universities – which falls into the economic category of a 'public good' in that it can be provided to everyone, and remain undiminished by the consumption – from those who arguably are most in need of its guidance. These texts would instead be either unreported and lost, or, very nearly the same thing, locked behind expensive or exclusive publishers' domains [Donovan and Watson 10].

It is undeniable that nowhere right of open access to information is recognized in definite terms, yet, in today's environment, hoarding knowledge ultimately erodes our power. If we know something very important, the way to get power is by actually sharing it. While we enthusiastically profess right to information through our path-breaking legislation, namely, the Right to Information Act, 2005, [RTI Act] we cannot sit back and censor scholarly information and limit them to a fortunate few. If we believe that academic information need to be disseminated to the consumers at large, we must consider of bringing out such an OA policy which will reach every nook and corner of this country and worldwide. And when the scholarly article is a product of a research carried out with the assistance of public funds in other words – the taxpayers' money – the voice in favour of OA grows louder.

**Problems with the Traditional Method of Publishing and Preservation**

One of the primary reasons that have galvanized the OA movement is the increase of library expenses and budgetary constraints. That may well be considered as a reason for the librarians being at the forefront of OA movement. The operating cost of the libraries has increased significantly worldwide in the last few decades.

The rationale for the Durham Statement was clear in stating:

> *"In a time of extreme pressures on law school budgets, moving to all electronic publication of law journals will also eliminate the substantial costs borne by law schools for printing and mailing print editions of their school's journals, and the costs borne by their libraries to purchase, process and preserve print versions."*

Although controversial in its bold scope, when read together with the Harvard vote, the Durham Statement made clear to onlookers that OA had become a serious organizing principle for the future plans of law libraries.

According to the latest Library Journal Periodical Price Survey, law titles rose 16% from 2008 to 2010, from an average cost of $294 to $338. The American Association of Law Libraries Committee Index for Legal Publications, however, reports a 42% increase in costs for all periodicals (both law-school subsidized and commercial) from 2005 to 2009, with the average price jumping from $155 to $222 [Donovan and Watson 4]. Data obtained from National Law School of India University (NLSIU), Bangalore conforms that the trend in India is almost similar. The overall costs of NLSIU Library costs have increased by 20% in last 3 years. That too, after expenses on the online databases has been halved, thanks to the UGC-INFONET Consortium grants. However, the print journal expenses have gone up by 10% during the same period.[3]

Down the years, libraries have not only provided access to books and other printed materials, but tried to preserve them for future users. Publishers of books and journals are not expected to maintain permanent back stock of their publications; preserving the works they published is a responsibility taken up by libraries. Yet printed information does not preserve itself. It requires paper manufactured so that it will not rapidly deteriorate over time, storage under appropriate temperature and humidification regimes, and proper shelving so that items are not lost. Most academic law libraries have traditionally striven toward comprehensiveness in their journal collections, the long runs of many journals and subscriptions to multiple copies of the most important ones mean that journal collections also take up large amounts of space in library facilities [Danner, Leong, and Miller 45 – 47]. This is a herculean task which requires large amount funds for keeping them in a user-friendly manner for the readers. Lying emphasis on OA journals and moving towards digitalization will not only enable the libraries from optimum utilization of space but also make preservation easy and 'stable', and above all, will liberate them from budget constraints.

Traditionally, the libraries in India have faced budgetary constraints which have been pointed out by various committees and commissions as well individual research studies [Bhatt 64]. Of course, comparing the budgets of the US and Indian law schools, would put us in a state of hallucination. Few years back, the annual budget (including for library staff) for the law library at the Harvard Law School is $14 million (Rs. 56 crore) and that of the Yale Law School was over $6 million (about Rs.25 crore) [Rajkumar]. The figures are well-above the budgets of the entire University, let alone the library! Even with such a gigantic budget, Harvard Law School has been pioneering the OA movement and that alone should give the law schools in India more impetus to join this movement.

To sum up, excerpts from the Durham Statement are worth mentioning:

> *"The presumption of need for redundant printed journals adds costs to library budgets, takes up physical space in libraries pressed for space, and has a deleterious effect on the environment; if articles are uniformly available in stable digital formats, they can still be printed on demand."*

**Accessibility and Impact of OA Journals**

The tradition of writing for impact instead of payment continued for centuries. Journal articles today are still written to advance knowledge and professional status, and new scholarly work depends on prior work. What remains important to many authors is wide dissemination and notice for their work, not financial reward, unusual in the world of intellectual property. Therefore, apart from jurisprudential justifications, the two most important aspects OA publishing considered worldwide are: *Accessibility* and *Impact*. The internet boom in the 1990s had a galvanizing impact on research as a whole – the legal profession became poised to disseminate limitless levels of information. With the growth of the Internet and associated web technologies, the cost of disseminating legal information was enormously reduced. Lower material costs, as well as the emergence and development of open source software, diminished the necessary investment of resources for dissemination and reproduction, as well as costs related to the preparation and management of legal documents. Data processing procedures have also evolved during this period that allowed for the easier and cheaper creation of information systems. This allowed for a simplified strategy for the management and dissemination of law. Furthermore, since the majority of official legal documents were being put together with word processing programs, the preparation of legal information systems was greatly facilitated. As a result of these new conditions, a new potential for the dissemination of law emerged, thereby making public access an extremely worthwhile endeavour in any development oriented program [Poulin].

In spite of the fact that great deal of web-based legal information is freely available through search engines like Google, and some laudable steps have been taken by many of the Western law schools and legal academia worldwide;

barriers remain for access to most of the research published in scholarly journals. Peer-reviewed literature is often funded by taxpayer-supported government grants and is highly valued by judges, researchers, and legal professionals alike. The irony is: while legal scholars provide free peer review, access is controlled by publishers who charge libraries and consumers hefty subscription and per-article fees to view this material.

Arguably, the two most well known paid legal databases are Westlaw and Lexis-Nexis. Extensive collections are also offered by HeinOnline and JSTOR. Unfortunately, there are no such comparative even paid databases available in Indian context. Though Manupatra, SCC Online and Indlaw are gradually emerging as forerunners for research among the legal fraternity, but they are chiefly tailored to search case-laws and legislation. At no cost, their journal sections command the respect when compared to their western counterparts. And being fairly expensive, the penetration of Westlaw and Lexis-Nexis in India is rather limited only to top echelon of the legal fraternity including the legal academia. The well-known Indian databases are not cheap either.

Under such circumstances, a question arose whether open access actually result in an article's increased citation? In 2001, Steve Lawrence wrote a brief yet controversial article for *Nature* postulating that having scholarship freely available on the Internet substantially increases that article's impact. In fact, he considered articles from the same publishing source which allowing him to assume that the examined articles were all of similar quality, and he found "*an average of 336% (median 158%) more citations to online computer-science articles compared with offline articles published in the same venue"*[ Lawrence].

In 2005, Chawki Hajjem, Stevan Harnad and Yves Gingras undertook a similar study across ten disciplines including Law. They concluded, when comparing open access articles from the same year, and in the same journal, that open access produced a citation advantage from between 25% to 250%, depending on the discipline. The specific Law results found that 5.1% of law articles were available through open access (across disciplines the range was between 5-15%, suggesting that law lags behind other fields in this measure), and that within Law generally the OA citation advantage came to 108%, second-best figure after Sociology [Hajjem, Harnard, and Gingrass].

This was followed by a research in 2011 particularly in the field of Law by James Donovan and Carol Watson which confirmed the findings of the earlier study but with certain modified numbers. They considered three journals of Georgia Law School, namely, Georgia Law Review, Journal of Intellectual Property Law and Georgia Journal of International and Comparative Law for this purpose. They found 29% of the articles in those journals are open access, and when modified to match the time span of the earlier study, the revised result showed 19% [Donovan and Watson 20]. The study concludes that "*the open access article can expect to accrue citations along the line of 58% more than non-open access articles of similar age and quality, from the same venue*" [24]. The researchers

conclude that because open access articles are more easily accessed, they are read more often. "*Convenient access alone, according to this argument, increases the likelihood of citation* [26]."

Another interesting aspect brought out in this study was the impact because of the stature of the law school or a particular journal. They argue that due to the high prestige, but "*articles in the Harvard Law Review will receive notice and citation regardless of whether they are also available in open access outlets. This would perhaps not be the case for an article published in the law review of a third- or fourth-tier school. If not for the ease of open access, such articles might get lost within the more traditional outlets, crowded out by more glamorous competitors* [30]."

**Challenges before Legal Academia In India**

OA was initiated in the developed countries and later many developing countries including India have joined the juggernaut. Without any exception, the STM community in India rules the roost. Various Indians R&D organizations, leading scientific research institutions (such as Indian Institute of Science (IISc), IITs, ISI, Institutes under the Council of Scientific and Industrial Research (CSIR) and Indian Council of Medical Research (ICMR), etc.) are now taking part in the open access movement by establishing institutional and digital repositories to provide worldwide access to their research literature. The Indian Medlars Centre (IMC), has taken the pioneering step of putting Indian biomedical journals accessible from a single platform [Keisham and Sophiarani 208 – 11]. Medknow Publications, a small company based in Mumbai, has helped 10 medical journals making the transition from print to electronic open access and all of them are doing much better now than before [Arunachalam "India's march"]. Thanks to all such efforts there is an open access to a large chunk of STM scholarly literature.

However, open-access publishing needs to be complemented by setting up interoperable institutional archives, which allow researchers to make versions of their articles publicly available online both before and after publication. In fact, IISc, Bangalore, was the first in the country to set up an interoperable institutional repository, *ePrints@IISc*, under the leadership of the Late Dr. T. B. Rajashekar.

Unfortunately, social science has been neglected for long; hence, there are not many social science journals of repute from India. Probably *The Economic and Political Weekly* is the lone journal which has a sizable following. It has OA policy which was unrestricted previously including its archive covering full text of the articles, however, at present full text of articles from the last four issues at any given point of time can be accessed. *Indiatogether.org* and *infochangeindia.org* are two relatively popular social science web portals consisting of numerous articles including some authored by well-known names. Though the articles published on those web portals apparently go through editorial screening, the credibility of those write ups are not beyond scepticism.

As far as law *per se* is concerned, the picture is far from encouraging. Unlike the STM community in India, there exists no such consorted effort. Most of the Indian legal journals suffer from 'low circulation - low visibility - low impact factor' syndrome. Be it law faculty of age-old universities or prestigious law schools – the situation is almost similar. Of course, a handful of the premier law schools like the NLSIU, Bangalore; the National Academy of Legal Studies and Research (NALSAR), Hyderabad, Jindal Global Law School, Sonepat, etc, have made some efforts in this regard. Authors' own experience is that either they are not very user friendly or they do not unlimited access to the back volumes. Of course, there exist some OA repositories, e.g. *legalserviceindia.com*, *legalperspectives.blogspot.com*, and *legalsutra.org*; however, neither the articles published therein are peer-reviewed nor the identities of people behind the initiative are known. They are more of a kind of blog. This is in stark contrast with the West. E.g. the Legal Scholarship Network (LSN) which is a part of the SSRN is directed by Bernard Black and Ronald J. Gilson. They are professors of Law from Austin and Stanford Law School respectively. Few commercial houses like the All India Reporter and The Practical Lawyer have given full or partial open access to their journal sections. And there are some web portals, e.g. *judis.nic.in*, *www.indiankanoon.org*, *www.vakilno1.com*, through which legislation and court judgments of the higher courts are available to the public at large. Apart from those few standalone efforts, OA movement has barely developed among the legal academia in this country.

Legal scholars in India write articles in hundreds of law or social sciences journals, national or international, most of them low-impact. Moreover, scholarly journal publishing in India has minimal impact outside the legal academia, that too also primarily authored by Western legal experts. The law journals from the law schools do not enjoy similar prestige like their counterparts in the West. The courts seldom take note of the articles written in Indian law school journals. Apart from commentaries, whatever journal articles the courts have taken into consideration are from established commercial print journals, such as, All India Reporter, Supreme Court Cases, Madras Law Journal, so on and so forth. Judging from this perspective, we regret to declare that legal intelligentsia in India has not contributed significantly in the development of jurisprudence through regular scholarly contribution. Added to the woes, the law journals of the law schools have very little access to create an impact for that matter. Under such circumstances, OA law journals from law schools become an imperative. Going by the research results discussed in the previous section, such initiatives would increase visibility of the journals and access to the scholarly writings of native experts, which would eventually create greater impact. As a matter of fact, easy access to Internet publication has been pointed out as one of the plausible reasons behind increased law review citations by the courts in the US [Schwartz and Petherbridge].

It may also be mentioned that the UGC has come up with new Guidelines, namely, UGC Career Advancement Scheme (Revised Pay Scales for Teachers),

2006, to consider scholarly contributions to journals only having ISSN Number alone while apprising candidates for promotions in their careers. As a matter of fact, many such legal journals with ISSN Number exist in India which has neither command authority nor visibility. The authors are sceptical whether such steps would enrich legal scholarship or further discourage legal scholars to contribute to any OA journal or repositories, which may have greater impact but no identifiable interest for the authors concerned. In fact, problems have been encountered at IISc as well where faculties prefer to write in journals for personal gains rather than contributing to their repository and furthering the cause of knowledge. In spite of efforts from the Archives Unit, the repository has less than 5% of the published papers of the Institute [Sahu and Parmar 30]. Many scholars also find print publication more professionally impressive than online publications [Albert 257 – 58]; and in the context of UGC's new guidelines, it will further dampen the spirit of publishing in OA journals.

OA research has a negligible impact in India among the legal academic curriculum. In fact, *Legal Education and Research Methodology*, which is an UGC-mandated core course at the LL.M. level, does not have any module on Open Access. And to the authors' knowledge, leave apart the conventional law universities, based on interaction with some students from top tier law schools across the country, none of the law schools, where law teachers have ample freedom to modify the course contents within the prescribed limits, have included the same in their course structure. That's why the students are largely ignorant about the development and importance of OA movement unfolding in the West.

While the legal intelligentsia is at the forefront of the OA revolution in the West, their counterparts in India have failed to make any impact, whatsoever. In fact, considerable efforts have been undertaken by the academicians in the STM field in this country for which it is reaping the benefits. E.g., thanks to the patronage of some dynamic OA activists, like Prof. Subbiah Arunachalam of IISc, that *ePrints@IISc* is still the highest ranked (# 98) Indian OA repository, as per the Ranking Web of World Repositories in January 2012 [Top Repositories]. The NLSIU has started efforts in building its own repository in order to open access the research papers authored by the faculty and researchers, articles published in its journals, conference papers, etc. it's a small yet commendable step towards a gigantic mission. More such efforts are long due.

**Avenues of Hope**

Quite a few things regarding OA have taken place in the field of higher education and libraries which concern the law universities as well. One of the most remarkable and identifiable development in the area was the foundation of the Information and Library Network (INFLIBNET) by the UGC in 1991. Though it started as a project, later in 1996, it became an autonomous Inter-University Centre of the UGC at Gujarat University Campus, Ahmedabad. Importance of OA is evident in the goals of the organizations which includes complete

automation of libraries in educational institutions, facilitate creation of open access digital repositories in every educational institutions for hosting educational and research contents created by these institutions and eventually provide seamless and ubiquitous access to scholarly, peer-reviewed electronic resources to the universities. The Shodhganga@INFLIBNET Centre provides a platform for research students to deposit their Ph.D. theses and make it available to the entire scholarly community in open access.

Another significant landmark in OA field is the establishment of "UGCINFONET DIGITAL LIBRARY CONSORTIUM" by the UGC in 2003. UGC-INFONET is an innovative project launched by UGC to facilitate scholarly e-resources to Indian academies through joint partnership of UGC, INFLIBNET and ERNET. This includes interlinking of universities and colleges in the country electronically with a view to achieve maximum efficiency through Internet enabled teaching, learning and governance. The objectives of the consortium include subscribing electronic resources for the members of the consortium at highly discounted rates of subscription, rational use of funds, and have more interaction amongst the member libraries [Bhatt 64].

The National Knowledge Commission (NKC) was set up by the Government of India in 2005. Easy access to knowledge, creation and preservation of knowledge systems, dissemination of knowledge and better knowledge services are core concerns of the Commission. The NKC has provided the much needed impetus to the development of academic libraries which can be envisaged in today's ICT environment where the nature, role and significance of academic libraries is transforming with cutting edge technologies and the focus is shifting from 'information storage' to 'information access', and this paradigm shift is inevitable for all overall improvement of library functioning and services for present survival and futuristic approach [Bhatt 64 – 65].

**Suggestions and Concluding Remarks**

In the backdrop of above discussions, it is crystal clear that the prevailing system of propagation of scholarly legal knowledge is unsustainable. Hence, sooner or later, the legal fraternity would be compelled to adopt open access system. Then, what should we do to make a smooth transition? A comprehensive OA policy is the need of the hour which may well consider the following aspects:

- One of the major problems faced in the legal fraternity is lack of awareness. A module on OA must be included in the *Legal Method* and *Legal Education and Research Methodology* subject at the LL.B. and LL.M. level respectively to facilitate more discussion among students.
- Data from NLSIU library shows that the number of online databases has increased from 5 to 8 in last three years. Ideally, law schools should say 'NO' to those corporate giants and instead train students more on utilizing open sources rather than making them dependent on paid databases.

- All the journals of the law schools shall have open access, irrespective whether print version is available or ISSN is assigned to it. This could be made a mandatory condition for the registration of the journal itself.
- All the Law Schools should mandatorily set up open access repositories and make available all sorts of in-house scholarly materials mandatorily available on them. Not only public-funded researches, any research which have public implications, for that matter, should also come under this purview. And these could be pre-conditions set forth while granting of recognition of the institute itself. Faculty, authors, and journal editors with subject expertise coupled with law librarians could potentially provide a very sophisticated, dynamic, and responsive system.
- All LL.M. and M.Phil. dissertations, and Ph.D. theses shall be submitted to Shodhganga@INFLIBNET. Being in public domain, this shall reduce duplicity of research works undertaken at the higher level and enhance originality and quality of ideas.
- Under no circumstances, the quality of the research papers should be compromised. Free publication must never become synonymous with sloppiness. While advocating for OA, we should bear in mind that readers or future researchers are not exposed to sub-standard quality of legal publishing.
- The law libraries in the West have contributed immensely to the OA movement including the Durham Conference. It is time for the law libraries in Indian law schools to wake up to the cause and collaborate among themselves to ensure seamless exchange of scholarly materials among themselves and world at large. This would be a corollary to the implication of INFLIBNET and UGC-INFONET. A legal repository in the line of Indian National Digital Library in Engineering Sciences and Technology (INDEST) is absolutely necessary. Most of the law colleges in the India cannot afford to subscribe to copyrighted databases like Westlaw or Lexis-Nexis, hence, such a legal OA repository would emerge as a leading scholarly database and bridge the gap between the privileged few and the rest of the crowd.
- Print journals involve excessive use of paper which has an adverse environmental impact. Considering from that perspective, we must move towards digital format of the journals. What could 'stable' format may be a point of contention [Danner, Leong, and Miller 50 – 52], but in due course our goal is to move towards all electronic publication.

Globalisation of legal research has become a universal trend. Legal scholars working in a particular country cannot limit their research to some limited audience. Then the research would have no purpose. With the development of web-based research, there has been a remarkable transformation in the

development of legal research. Now with open access, the legal world is poised to disseminate and receive limitless scholarly information. The onus is on the law schools – a unique synergy of students, academics, and librarians with specialized knowledge, intellectual might and manpower to research; to spearhead this revolution. And to get moving towards that direction concerted advocacy is required. The authors' express their dismay over the fact that in spite of being very important, OA has remained largely underexplored area in context of Indian legal fraternity. It's high time for all of us to emerge out of the veil of ignorance and create an intellectual revolution in the country which is long overdue.

**Endnotes**

1. The Dire Necessity.
2. The participants were the directors of the law libraries at the University of Chicago, Columbia University, Cornell University, Duke University, Georgetown University, Harvard University, New York University, Northwestern University, the University of Pennsylvania, Stanford University, the University of Texas, and Yale University. Subsequently, many other law schools became signatory to the Durham Statement.
3. The authors are grateful to the staff of NLSIU Library for sharing certain data for the purpose of this research.

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# OPEN ACCESS MOVEMENT: CHALLENGES AND OPPORTUNITIES FOR INDIAN LEGAL INFORMATION SCIENCES CENTERS

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**Abstract**

*Free access to law emerged as a revolutionary movement that promotes free access to public legal information through Internet, removes the price and permission hurdles. The paper describes the concept of Open Access and its usefulness in bridging the knowledge gaps between privileged and under privileged communities. It traces the history of Free Access to Law Movement at national and international level. It also discusses the challenges and opportunities for Indian law libraries. It concludes, emphasizing that the authors must publish their scholarly work in Institutional Repositories, Blogs, Open Access journals etc. and urges the government to make pubic legal information available to all at free of cost and fund such institutes which promotes OA movement.*

**Key Words:** Open Access, Free Access to Law Movement, Legal Information Sciences centers, Law Library, India.

## 1. Introduction

The Internet and World Wide Web have brought gigantic changes in the process of information generation and distribution. World Wide Web has given more opportunities to creators of knowledge and seekers of knowledge and more particularly to the library professionals, who are facilitators between these two groups. The 21st century has been largely acclaimed as the 'knowledge century era'. The higher education system has undergone metamorphosis due to technological developments and innovation, India is no exception to this. India has the large and complex higher education system in the world next to U.S and China. In many countries the first attempt to exploit the advantages of the web for providing legal information came from the academic sector rather than government, and did so with an explicit ideology of free access provision (Greanleaf, Chung, and Mowbray 319).

The judiciary in India has been amongst the more enthusiastic adopters of ICT with the judgments and orders of various High Courts and Supreme Court being published for free almost instantly on the Internet(Iyengar). With breathtakingly rapid advance of computer technology, law libraries and legal practice will also change out of recognition (Chander 21). But, at the same time it

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has become very difficult for legal information sciences centers to acquire resources particularly electronic resources due to escalation of prices and shrinking budgets. Information possession to information access to open access to information is a gradual shift which is taking place in current information era (Hanchinal 97). This has led to a movement called 'free access to law', worldwide.

The Open Access has brought in a welcome change and opened up new avenues for scholarly publishing and access models (Pandian 232). The Montreal declaration (2002) heralded a new chapter in free access to law. Legal research increasingly has global dimensions. International trade and the WTO, the internationalisation of environmental and human rights issues, the growth of international Courts and Tribunals and the complexities of the growing numbers of regional agreements and organizations, are some obvious examples that require lawyers, governments, businesses and civil society organisations to undertake legal research with an international element more than ever before (Greenleaf 321).

The need for free access to law has become the subject of much discussion amongst legal professionals, government administrators, businesses, NGOs, students, academics and the general public. The Legal Information Sciences Centers must recognise the importance of scholarly communication and intellectual property rights and create awareness among the stake holders about free access to law.

**2. Open Access (OA)**

The Internet has given new opportunities to make information available to large number of people virtually at no cost. This allows them to access and use the information for new, creative and innovative ways. As a result there is a call for promotion of open access publication so that it can be accessed easily across the world. OA also helps government to fulfill its obligation towards society and also removes the hurdles such as copyright and price.

According to Montreal Declaration (2002), 'public legal information from all countries and internationals institutions is part of the common heritage of humanity. Maximising access to this information promotes justice and the rule of law; Public legal information is digital common property and should be accessible to all on a non-profit basis and free of charge; Organisations such as legal information institutes have the right to publish public legal information and the government bodies that create or control that information should provide access to it so that it can be published by other parties'. It emphasizes that the public information published by the State should be made available to the common people without any hurdles.

**2.1 Why Open Access?**

India is producing about 100,000 law graduates every year and there are over a million lawyers in India. Yet there are about 3.2 crore cases pending in

high courts and subordinates courts across the country while 56,383 cases were pending in Supreme Court of India as on December 2011(The Times of India). The big question before the authorities would be how to deal with this problem? Free Access to legal resources will be an alternative solution to counter this problem.

The rising cost of print and electronic publications and cut in library budget forced librarians to search for alternative solutions. OA to scholarly work is emerging as solution to overcome this problem since both authors and users benefit mutually.

**3. Legal Education in India**

The pattern of legal education which was in vogue in India was transplanted by the British, after establishment of their rule in India. The beginning of formal legal education was made in 1857 when legal education was introduced as subject for teaching in three universities of Madras, Calcutta and Bombay. From 1857 – 1957 a stereo typed system of teaching compulsory subjects and a two years course continued. The Advocates Act, 1961 prescribed minimum standards for lawyers to enter into practice in the court of law. Accordingly, a three year law course was introduced in 1967 and it was adopted by all the universities in India.

In 1985, the Bar Council of India insisted all the universities to introduce 5 year law course; accordingly many law schools in India started 5 year law course where students may join after secondary school. This phase nominally began with the establishment of National Law School of India University, Bangalore in 1986, its regular academic activities began on 1 July 1988. This model brought new changes in the legal education in India as it was completely a different model followed in common law countries.

The law school revolution began in right earnest in 2000 by when the other National Law Schools (like NALSAR, NUJS, NLU-J, NLIU-B) were established (The Unwilling Lawyer). Within a decade the number of NLUs jumped from one to fourteen (Bar and Bench). These law schools emphasized more on practical aspect of teaching law than theoretical aspect. As per the latest data available on Bar Council of India website there are more than 900 law colleges in India as of March 2010 (The Unwilling Lawyer).

The recommendation of National Knowledge Commission (NKC) of India clearly states that the legal education should meet the needs of trade, commerce and industry in the growing internationalization of the profession. It paved the way for improvement in legal education and raised the standard of Indian legal education. In 2011, the Government of India launched the Aakash Tablet, these tablets have been designed primarily for students and keeping the education sector in mind. The ICT has enabled the government to bring new changes and developments in Indian education sector.

**4. Free Access to Law Movement**

Many countries have established legal information institutes at national, regional and at international level to share and exchange information. Free Access to Law Movement (FALM) is the loose affiliation of legal information institutes (Greenleaf). It is an initiation to bring together projects of number of institutions from across the world dealing with legal information issues and whose goal is to provide free access to legal resources.

The academic institutions of USA, Canada and Australia initiated the movement twenty years ago. Since then they have been making public legal information available for free access via Internet. The genesis of first FALM is traced to Cornell's Legal Information Institute (LII), which has, since 1992 been publishing, 'legislation, court decisions and other document, online available to anyone with Internet access'(Iyengar). However, the Australasia Legal Information Institute (AustLII) has been one of the major players in free access to law movement since 1995 (Greenleaf, et al. 229).

It was on October 2002, a conference, "Law via Internet" was held in Montreal between eight legal information institutes (LIIs), who produced a declaration on 'Free Access to Law'. Thus confirming their adherence to the common philosophy on free access to law, the FALM members are parties to this declaration. The Montreal Declaration (2002) was further, amended at the meetings in Sydney (2003), Paris (2004) and Montreal (2007). India is one of the signatory countries to the Montreal Declaration (2002). There are about 41 LIIs participating in free access to law movement worldwide as of December 2011.

In many of the developed countries the governments have a policy to make public information available to the citizens at free of charge and free from copyright hindrances. The free access to law movement, centered on university-based legal information institutes, is assisting and encouraging the development of free access to law facilities in many countries in the developing world (Germain).

Some of the significant initiatives related to Free Access to Law Movement at international level are briefly described below.

**4.1 Legal Information Institute (LII) (http://www.law.cornell.edu/uscode/)**

The LII was launched in 1992 by co-directors Thomas Bruce and Peter Martin. The collection of materials comprises from the Constitution to the U.S. Code and from Supreme Court judgments to the code of Federal regulations. It offers all opinions of the US Supreme Court handed down since 1992, together with over 600 earlier decisions selected for their historic importance, over a decade of opinions of the New York Court of Appeals, and full US Code (LII).

**4.2 British and Irish Legal Information Institute (BAILII) (http://www.bailii.org/)**

It was launched in the year 2000, it provides access to the most comprehensive set of British and Irish primary legal materials that are available

for free and in one place on the Internet (British & Irish). It has over 80 databases covering 7 jurisdictions, comprising over 297,000 searchable documents.

**4.3 World Legal Information Institute (WorldLII) (http://www.worldlii.org/)**

The AustLII developed WorldLII in the year 2001 and launched in 2002. It has three main aspects: as a portal making multiple LIIs simultaneously searchable; its own databases; and its catalog and websearch. WorldLIIs networking of multiple LIIs makes it the largest free access legal research facility on the Internet because it makes simultaneously searchable the content provided by the other LIIs (Greenleaf). It comprises 1230 databases from 123 jurisdictions via 14 legal information institutes (World LII).

**4.4 Australasian Legal Information Institute (AustLII) (http://www.austlii.edu.au/)**

AustLII was founded in 2002, it provides free online access to Australian legal information. It publishes public legal information i.e. primary and secondary legal materials created by public bodies for the public use and it has a collection of law journals too. It has 485 databases from all Australasian jurisdictions (AutLII).

**4.5 Commonwealth Legal Information Institute (CommonLII) (http://www.commonlii.org/)**

The CommonLII was launched in 2006, it has 976 databases from 59 Commonwealth and common law jurisdictions via 8 Legal Information Institutes (CommonLII).

**4.6 Asian Legal Information Institute (AsianLII) (http://www.asianlii.org/)**

The AsianLII was launched in 2006, it is a non-profit and free access website. It has 309 databases from 28 Asian jurisdictions via 8 legal information institutes (AsianLII).

**4.7 Global Legal Information Network (GLIN) (http://www.glin.gov/search.action)**

It was established in 2007 and it is operated by the US Library of Congress, is database of official texts of laws, regulations, judicial decisions and other complimentary legal sources contributed by governmental agencies and international organizations (Greenleaf). GLIN members consisting from 40 countries and international organizations contribute full text of their published documents in their original languages (GLIN).

**5. Free Access to Law in India – Some Initiatives**

India a vast country having multi cultural and multi lingual population. The legal system in India follows the common law model prevalent in the countries which were at one time under British rule or were part of the British

Commonwealth (Srikrishna 242). The Constitution of India, came into effect on 26 January 1950, is the supreme law of the land. It declares the Union of India to be a sovereign, socialist, secular, democratic republic assuring its citizens justice, equality and liberty.

After the enactment of Right to Information (RTI) Act, 2005, for the first time in India, the public authorities not including the judiciary are bound to disseminate certain kind of information in their custody to those who demand by applying in a prescribed proforma given in the RTI Act, 2005. It is prescribed under section 4 sub section 4 of the RTI Act, 2005 that, "the information should be easily accessible, to the extent possible in electronic format with the Central Public Information Officer or State Public Information Officer, as the case may be, available free or at such cost of the medium or the print cost price as may be prescribed" (Sinha, 60). Thereby, it ensures that citizens will always have access to authentic, useful and relevant information. This gave an impetus for free access to law movement in India.

Some of the initiations in Free Access to Law Movement (FALM) in India are discussed as below.

### 5.1 The Judgment Information System (JUDIS) (http://judis.nic.in/)

It consists of the Judgments of the Supreme Court of India and several High Courts, Tribunals and District Courts. All reported judgments of Supreme Court published in SCR Journal, since 1950 till date are available. The Judgments reported in SCR till 1993 also have head-notes. The judgments reported in SCR in 1994 and later have only text of judgments without head-notes (JUDIS).


### 5.2 Indian Courts (http://indiancourts.nic.in/index.html)

It's a bouquet of Websites of the Supreme Court and all 21 High Courts and their Benches in India. It provides a single point access to information related to the Supreme Court and any High Courts in India (Indian Courts). It provides

Litigant centric dynamic information like Judgments, Cause lists, Case-status, etc. as well as static Information such as History, Jurisdiction, Rules, Past and present judges, etc.

**5.3 India Code (http://indiacode.nic.in/)**

It consists of all the Central Acts of Parliament as on date right from 1836 onwards. It provides access to; Act Year, Act Number, Short Title, Act Objective and Full Act Text (India Code). It also gives links to judgments of Supreme Court, 16 High Courts and Allahabad, Chandigarh and Delhi District Courts and Central Administrative Tribunal.

**5.4 Supreme Court of India (http://supremecourtofindia.nic.in/)**

It gives access to the judgments of Supreme Court and consists detail information about Supreme Court of India.

**5.5 India Legal Information Institute (Indlii) (http://www.indlii.org/)**

Indlii a free legal web portal was launched on 25th November, 2006. It provides information about central and state laws, judgments of Supreme Court, High Courts and various other courts in the country plus news of the legal world. It is a not for profit institute with a vision to make online and full public access to all publicly available legal information of India (Wikipedia.).

**5.6 Indian Kanoon (http://www.indiankanoon.org/)**

In the year 2008, Sushant Sinha, began offering free access to judgments of the Supreme Court of India through his website IndianKanoon.org (IK). In the following two years, it has grown in multifold hosting over 1.2 million documents. IK provides free online access to Indian judicial and administrative decisions, debates of India's constituent assemblies, statutes, reports of the law commission of India and articles from selected law journals (IndianKanoon).

**5.7 Advocate Khoj (http://www.advocatekhoj.com/)**

This portal is established in early 2008. The Law Library module of AdvocateKhoj is a single point source for accessing diverse Indian Laws. It provides access to; Legal Tips, Agreements, Forms, Areas of Law which gives information on specific legal areas on 110 legal categories, Supreme Court Judgments with case numbers, parties name, judges' names and head notes, Bare Acts, Major 55 rules are available with free access to the full-text & Glossary presents over 2300 entries (AdvocateKhoj).

**5.8 Indian Legal Info (http://indianlegal.info/default.aspx)**

Indian Legal Info, an initiative inspired by 'free access to law' movement. It is a cluster of web portals on Indian law and tax. It consists of a main portal and several micro-sites and provides daily updates of Indian legal and tax developments.

A first-of-its-kind web cluster makes available the full original text of selected Indian legal and tax developments - news, legislation, judgments and rulings, regulatory guidelines and circulars, events, and books and articles (Indian legal Info).

### 5.9 Legal Information Institute of India (LII of India) (http://liiofindia.org/)

LII of India is the joint project of Eight National Law Schools of India in conjuncture with AustLII (Australasian Legal Information Institute) to provide free online access to Indian Legislations, Treatise, Case Laws, Law reform reports, Legal scholarship, Cases concerning India in International Courts and Tribunals and other legal resources. The portal was open for public use on 25 November, 2010 but it was officially launched on 9 March 2011. Today it has 151 databases and over 750,000 searchable documents, 93 databases related to legislation with about 7,000 items of legislation, 43 databases of Indian case law comprising over 750,000 cases in full text and 13 law journals…… (Greenleaf 340).


The LII of India is a party to the Free Access to Law Movement (FALM). It collaborates with worldLII, AsianLII, CommonLII and other members of the FALM. It supports free access to public legal information in India and also co-operates with other LIIs to create international network promoting free access to law.

### 6. Challenges and Opportunities

The growing use of open source products, creation of more locally created digital collections, the increasing complexity of licensing issues, and litigation involving the use of materials in course e-reserves and course management systems, reinforce the need for academic libraries to provide value-added intellectual property services (ACRL). Because, open access resources are almost free from copyright restrictions except for commercial use. Thus, the library professionals must keep pace with the emerging technologies and adjust to the

new environment and information use behaviors of faculty, students, academicians, lawyers and judicial administrators. Therefore, legal information sciences centers are today facing following challenges;

(i) the lack of infrastructure and technical support to create Institutional Repositories

(ii) misconception of authors about plagiarism and lack of awareness about pre-print and post print publications

(ii) fear of authors to publish their research work in IR, blogs and OAJs

(iv) to find out the reputation of the publisher since lot of free information available on Internet

The free access to legal information has thrown many challenges to the law librarians. An efficient approach to dealing with information overload and unfiltered information while doing legal research is to start with authoritative research guides on the web (Germain). The best way to provide authentic and reliable legal information is to access the government and reputed websites.

The swift change in information technology and the escalation of prices in print and non-print materials affected the Indian law libraries considerably. However, OA permits the public to use the legal resources without any restrictions and removes hurdles such as to negotiate licenses, prices etc. It also gives equal privilege to all to access the information and there are no hassles of discontinuation, missing issues etc. OA provides an opportunity to own copies of journals or articles and gives right to archive without special permission or any payment and provides unlimited access.

**7. Some Significant OA Legal resources at International Level**

- Findlaw (http://www.findlaw.com/)
- LexisNexis Communities (http://www.lexisone.com/lx1/caselaw/freecaselaw?action=FCLDisplayCaseSearchForm&l1loc=L1ED&tcode=PORTAL)
- World Intellectual Property Organization (WIPO Lex) (http://www.wipo.int/about-wipo/en/what_is_wipo.html)
- American Bar Association (http://www.americanbar.org/groups/departments_offices/legal_technology_resources/resources/free_journal_search.html)
- Bodleian Law Library (http://www.bodleian.ox.ac.uk/law/e-resources/databases)
- Constitution Finder (http://confinder.richmond.edu/)
- Open Access Law: Adopting Journals (http://sciencecommons.org/projects/publishing/oalaw/oalawjournals/)

**8. Peer Reviewed Open Access Journals**

- Asian-Pacific Law & Policy Journal (www.hawaii.edu/aplpj/index.html)
- Duke Environmental Law & Policy (www.law.duke.edu/journals/delpf/)
- Duke Journals of Comparative & International Law (www.law.duke.edu/journals/djcil/)
- Duke Journal of Gender Law & Policy (www.law.duke.edu/journals/djglp/index.htm)
- Duke Law Journal (www.law.duke.edu/journals/dlj/)
- ELaw-Murdoch University Electronic Journal of Law (www.murdoch.edu.au/elaw/)
- Electronic Journal of Comparative Law (http://www.ejcl.org/)
- European Journal of Law and Technology (EJLT) (http://ejlt.org/)
- Federal Courts Law Review (www.fclr.org/content/fclr.htm)
- International Journal of Communications Law and Policy (www.digital-law.net/IJCLP/)
- International Journal of Environmental Sciences: (IJES) (http://www.ipublishing.co.in/jesindex.html)
- Law & Contemporary problems (www.law.duke.edu/journals/lcp/)
- Michigan Telecommunications and Technology Law Review (www.mttlr.org/)
- Richmond Journal of Law and Technology (http://law.richmond.edu/jolt/flash_site/flash_home.html)
- The Connecticut Public Interest Law Journal (http://www.law.uconn.edu/journals/cpilj/)
- Yale Human Rights and Development Law Journals (www.yale.edu/yhrdlj/index_enhanced.htm)

**9. Some Significant OA Legal Resources in India:**

- Central Information Commission (CIC) (http://cic.gov.in/)
- DOAJ (Directory of Open Access Journal) (http://www.doaj.org/)
- India Law Journal (http://www.indialawjournal.com/index.html)
- International Journal of Criminal Justice Sciences (IJCJS) (http://www.cybercrimejournal.com/)

- International Journal of Cyber Criminology (IJCC) (http://www.cybercrimejournal.com/)
- Law Commission of India (http://lawcommissionofindia.nic.in/)
- Law khoj (http://lawkhoj.com/)
- Legal service India. Com (http://legalserviceindia.com/)
- Legalsutra – Law students' Knowledge - Base ( http://legalsutra.org/)
- Ministry of Law & justice (http://lawmin.nic.in/)
- National Consumer Dispute Redressal Commission (http://ncdrc.nic.in/)
- National Human Rights Commission (http://nhrc.nic.in/)
- Parliament of India (http://parliamentofindia.nic.in/)
- The Bar Council of India (http://www.barcouncilofindia.org/)
- The Constitution of India (http://lawmin.nic.in/coi/coiason29july08.pdf)

**10. Conclusion**

Research process is metamorphosing in manifolds due to change in information and access facilities (Hanchinal 110). Research originating in India often goes unnoticed, even by other researcher of same discipline. Therefore, creating institutional archive and providing OA journals would help reduce the isolation of our scientists (Arunachalam). The University Grants Commission (UGC) realizing the significance of open access has asked all the institutes under its umbrella to create and develop their own IR.

The organizations that are propagating Free Access to Law such as LII of India, Indlii etc., need funding to sustain for longer time as they are not-for-profit. The State should support them by extending necessary facilities. The MHRD, Government of India, has launched an ambitious project called National Mission on Education through Information and Communication Technology (NME-ICT) in 2009. It is funded on 75:25 cost sharing basis between central government and university/colleges respectively. It was decided to link all the academic institutions together to share and exchange the information.

The Open Access has provided more opportunities to the legal information sciences centers by providing access to public information published by the government and scholarly works of the authors at almost no cost and free from stringent copyright laws. The Free Access to Law Movement gained momentum worldwide from 2000 onwards. But, most of the Indian authors are still unaware and have fear to publish their work in Institutional Repositories (IR), Blogs, Open Access Journals (OAJ) etc. The librarians of legal information sciences centers must discuss with authors and convince them to publish their works in such publications to promote free access to law.

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# ONLINE PUBLICATIONS: IS IT THE 'WORLD OF IDEAS' OR THE 'WORLD OF COMMODITIES'?

**Vaishali Kant**
**Ravindra Sadanand Chingale***

**Abstract**

Ownership creates right over the property and it can be considered as right in rem. If the property is intangible then the right of ownership over this virtual property becomes important to claim damages from the wrongdoer. Ownership of intellectual property is one of the most confusing and emotionally charred issues of the digital age. Thus the issues surrounding intellectual property in the digital space are emerging as the heated debate and pushing for updating laws to cope up with the upcoming changes. 21st century is defined as web century, where everything is connected with web technology and electronic medium. Today, what is needed in the printed form for copyright protection is also available or found only in electronic form, which raises questions in our mind as to "who owns what? What, exactly is owned? What rights does ownership convey? How to protect such rights? Is it reasonable for consumers to afford high priced subscriptions for these digital databases? and many more". There is rising demand of electronic databases from all students, researchers and teachers. With the technological advancement the use of internet and WWW medium for publishing articles, Research papers, Books, White Papers, Working Reports has been increased day by day. Many Publishers and Authors are making their material or views available online for the access to the global community, in keeping their economic interests and benefits in mind.

In this era of networked world of virtual spaces with no control over the appearance and location of their contents anything can happen with the simple 'click'. This lead to a huge risk of unlimited access and sharing of digital data to large extent, which negatively impact over the potential gain as well. In this changing world, information published digitally is prone to high threats of easy reproduction and losing economic value. Therefore, IP rights management becomes a necessity to regulate online publications and to prevent digital or Internet piracy. We are right now in red alert for securing the digitally available information to the users and preventing unauthorized use of the same by emphasising on the concept of 'Fair Use'.

Knowledge is not private property, but to promote the research and giving credit to the original piece of information it is needed adequate encouragement and incentives. There is a requirement of managing the balance between the

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author's economic interests and also the reasonability or justification for the consumers to pay heavy for accessing such protected materials. There is always a conflict between the economic gain and the academic interests, which this paper is aiming to deal. The authors are striving to bring out the mode for leveraging the intellectual property available in digital form to achieve its maximum value, without limiting access or hoarding ideas. This is an attempt to find out the way out of this contrast with consideration provisions from Indian Copyright Act and USA Copyright Act.

**Key Words:** Copyright, Publication, Online Publication, Moral Right, Fair Use, Legal Database

**Introduction**

The theme of this paper is to work out for the situation to bring balance between the copyrighted publication available at high cost to the public and the fair use of such publication for enhancing knowledge at fair and reasonable price without any much restrictions and liabilities as such. There is a confusion as to restricted path set for accessing online database, when there is only academic interest of the users still continues which our legal framework has not sorted out yet. Although there is a defence available for the fair use of the copyrightable material, still there is a practice of paying heavy charges for accessing any online published contents. It is still not clear that are the charges asked for the services provided or actually for accessing the copyrightable content available on the net. Any legal database like Manupatra, Indlaw, Heinonline, Westlaw, Juris etc are charging heavy amount for making the content accessible to the users?

No doubt, today even education has become a part of business, but still the fundamental reason behind the publication is to make the public aware about the information. Therefore, in any sense, is it ethical to have setting restrictions on the path of knowledge. Is it not restricting the right to information of every person? Is not when the ideas are available at free flow, then such ideas will be more promoted or supported? Users will develop their knowledge on the basis of paid data and will restrict their knowledge in the same provided boundary for other paying hands. Is this knowledge is now has become a commercial commodity than a symbol of Saraswati/Knowledge? What are we all paying for - ideas, knowledge, imaginations, creativity? All these are intangible, which cannot be seen, only can feel around. Is it true to say that Intellectual Property Rights is making everything possible under the sun commercialized. We need to find out answers from the copyright act and from the provision therein regarding the fair use defence.

**What is Publication?**

A publication is a piece of information, regardless of its format, that is made available to the general public, or to an identified public, either free of charge or for a fee. The following are some of the types of publications such as Journals,

Newsletters, Research papers, Discussion papers, Technical reports, Annual reports, Fact sheets, Manuals, Public accountability documents such as environmental impact statements and exposure drafts for public comment, Conference proceedings where the full text of presentations is provided, Databases of information for public access, Substantial ministerial and departmental speeches, Any document that would formerly have been published in print, Any document eligible for an ISBN or an ISSN, Every new edition/version of any of the above (this does not include minor changes), Web sites or parts of a web site, which provide substantial, unique information about an initiative, project, event or subject area.

**What is Online Publication?**

All such representations which are available in networks or server in the form of written text are considered as online publication. The examples are e-books, e-journals, digital representations, music files and websites.

In digital publication, students and researchers use various types of resources for enhancing their knowledge. The following are some of the resources which are supplied in the e-learning process of education:-

1. Creating the Databases of Library catalogues.
2. Providing links for online available contents
3. Procuring reference sources
4. Subscribing and accessing Bibliographic database
5. Subscribing and accessing Full text journals
6. Providing links to important websites
7. Digitization of newspaper prints
8. Digitization of the resources generated internally in the institutes.

Many of the referred sources or other digital sources are used by the researchers for their studies purpose. While doing so, researcher usually faces problem of extra expenditures in availing the benefits of online publications, which are also essential part of research. In many cases, universities assist the students to conduct research by subscribing for such paid databases for student use. By this, direct financial burden does not come on the head of the student. But many universities are still there which are unable to provide such facilities or benefits to their students. Thereby, such students are not able to attain adequate assistance from the university and fail to achieve the target of doing quality research.

The high subscription charges for accessing online publication can be also one of the reasons for such failure. It is quite proper to understand that in the world of Intellectual Property Right, ownership of the creation lies with the creator, and if someone is utilizing such creation for his/her purpose, then the

owner deserves to receive remuneration or at least credit for his ability to innovate. But such encouragement should not in turn discourage researchers for continuing with their research activity in any manner.

**What is E-Publication?**

E-Publication is known as publication through use of internet or can be considered as publication of digital version of traditional print material like books, journals, thesis and bibliography with the help of electronic devices like software, mobile phones, compact disks and pen drives etc.

The term electronic publishing has been defined in many ways such as any non print media material that is published in digital form to an identifiable public. The media in an e-publishing can be text, numeric, graphic, diagram, charts, still or motion pictures, sound, video, or as is frequency the case, a combination of any or all of these.[1]

The following are some of the important types of E- Publication:

**1. Electronic Books (e-books)**

The Oxford English Dictionary defined the e-book as a hand-held electronic device on which the text of a book can be read. In other words, we can say that a book whose text is available in an electronic format for reading on such a device or on a computer screen. Simply speaking, e-book is a book whose text is available only or primarily on the Internet. It encompasses any electronic/digital text that is book-like in nature and that can be read on some form of computer – whether desktop, laptop, handheld or a specialist form known as an e-book reader or e-book device. It has been suggested that it is not limited in content or form or structure; nor by virtue of its origin. With the use of the Internet and the World Wide Web increasing day by day, it is not surprising that many e-books are uploaded on the internet for public access and can be easily downloaded by a simple click.

**2. Electronic Journals**

E-journals are like global information highways, so these are being added to library collections at exponential rates. Libraries are doing extensive work to make e-journals available to their users and keeping them abreast with latest developments in their field of interest. E-journals are accessible either free against print subscription or for a nominal charge along with the print subscription. Access to e- journals is generally provided either by the publisher or through their aggregators. E-journals have provided excellent opportunities to access scholarly information, which were previously beyond the reach of libraries due to geographical constraints. E-journals possess many added features for the facilitation of libraries and its user community. These offer concurrent access to the scholarly content for multiple users. So these are boon for a huge campus where there are hundreds of users with many departments. Other features of e-

journals include full-text search, multimedia facilities and hypertext links. Text search is much easier and less cumbersome. E-journals also include multimedia and graphics to attract readers. Also the hypertext available in the e-journals will directly link to the areas of greatest interest and results in creative reading. Maxymuk (2004) highlighted that advantages of electronic journals include no physical space required and accessibility from almost any workstation that can be connected remotely to the institution's network. Thus e-journals can be accessed round the clock across geographical barriers, which make e-journals omnipresent. The most fortunate thing about e-journals is that both libraries and users can conquer the problems of missing issues and delay in receiving the issues. It can be clearly said that e-journals are truly a dream come true both for the librarians and users. Consequently libraries are now persuaded to subscribe to e-journals from a vast variety of publishers and providers.

Various names of e- journals are Online journals, Electronic serials or e-serials, Electronic periodicals, Zines or e-zines or webzines, Digital serials or d-journals.

**Development of E-publication**

With the start of decade of 1990 there was boost to electronic publication and thus it can be considered as new e publication era and birth of new information age. With the growing information industry there is growth in the collection of information, distribution of information and segregation of it as search engine has become very big business. Many new players like Hein online, J-stor, Manupatra and many other appeared on the screen of e- publication with the older and larger players like Lexis and Westlaw and picture of online publication has changed. With Lexis and Westlaw and others placed in every law school, and each law student trained in using online systems and given free use of very high quality material and it has converted the online publishing into booming industry. Knowledge and Research articles become economical viable and valuable. As Ken Svengalis notes, "In sharp contrast to 1977, when at least 23 legal publishers of some size and reputation were separately owned (along with scores of smaller ones), today the bulk of publishing resources are under three major corporate umbrellas: the Thomson Corporation, Reed-Elsevier, and Wolters Kluwer."[2] The changes in legal publishing have been fast and furious so that it is difficult to recognise who owns whom without a programme. The law book industry is always in demand as the facets of law are changing with change in society. One does not wish to romanticize what was always a business. Legal information companies always cared about profits and bottom lines. But when the smaller, older companies played key roles, legal information was viewed as special, and it was treated as such. While many of the current managers of the remaining companies also have deep roots in the publishing business, they report to much larger entities, and often operate within much larger financial contexts. Legal information has become a commodity. Moreover, the changes in legal publishing are taking place on a global scale. Why does this matter to the

typical legal researcher? Does anyone really care who produces the information? Whether this monopoly is becoming hurdle in legal research? How a poor legal student from remote area can access this paid information without any financial support?[3]

**Concept of Copyright and Fair Use**

As we know, that Copyright is a right given by the legal framework to the creators of original literary, dramatic, musical and artistic works and producers of cinematograph films and sound recordings. In fact, it is a bundle of rights including, inter alia, rights of reproduction, communication to the public, adaptation and translation of the work. There could be slight variations in the composition of the rights depending on the work, but still copyright subsists.

The Indian Copyright Act confers copyright on (i) original literary, dramatic, musical and artistic works, (ii) cinematographic films and (iii) sound recordings. The word `original' means that it should not be copied from other works or alternatively it should be the outcome of independent efforts. The Act empowers copyright holder(s) to do or authorise doing a number of activities. The important among these are:

a. to reproduce the work in material form
b. to publish the work
c. to perform the work in public or communicate it to the public
d. to produce, reproduce, perform or publish any translation of the work
e. to make any cinematographic film or a record in respect of the work
f. to make any adaptation of the work
g. to do, in relation to a translation or an adaptation of the work, any of the acts specified to the work in sub clauses to (a) to (f).

The grant of copyright is a limited monopoly. It is limited in the `scope' of the rights granted and in terms of `time'. In India, copyright on a literary work is provided for the lifetime of the author plus sixty years after his death. In case of joint authorship, the sixty years period is calculated from the beginning of the calendar year following the year in which the last (surviving) author dies. Copyright with respect to photographs, cinematographic works and sound recordings spans for 60 years of its first publication. In order to strike a balance between the society's need for access to knowledge and the need to rewarding creators, limited uses of copyright protected works are permitted without authors consent. These are called `fair use' of copyright.

Section 52 of Indian Copyright Act permits certain activities which do not amount to infringement. Important in this `exception list' are reproduction of literary, dramatic, musical or artistic works for educational purposes, e.g. research, review etc., and reporting in newspapers, magazines and periodicals

etc. It allows for the use of copyrighted material by the researchers for the academic or research interest.

The Copyright Act of India provides right-holders a dual legal machinery for enforcing their rights. The enforcement is possible through (1) the Copyright Board and (2) the courts. Legal remedies include imprisonment and/or monetary fines - depending upon the gravity of the crime. Sometimes remedies also include seizure, forfeiture and destruction of infringing copies and the plates used for making such copies.

The 1984 amendment has made copyright infringement a cognizable non-bailable offence. Under the provisions of the Act any person who knowingly infringes or abets the infringement of copyright is considered as an offender and is punishable with a minimum of six months imprisonment which may extend to three years and a fine between fifty thousand and two lakhs rupees.

Section 107 of the U. S. Copyright Act of 1976 establishes the affirmative defense to copyright infringement of "fair use." The act does not offer definition of "fair use," however; it enumerates four broadly worded factors that courts "shall" consider in determining whether a use is "fair" and thus noninfringing. They are (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the effect of the use upon the potential market for or value of the copy- righted work.[4] In fact the last part is mostly related with the authorization by the author and distribution of the copyrighted material. While extrajudicial and structural limits to copyright are under attack, fair use law has been realigned around transformative use, in which the user does more than simply copy the original work.[5]

The Doctrine of fair use is an integral part of Copyright law. It permits reproduction of the copyrighted work or use in a manner, even without the permission of the author, which would not amount to infringement of copyright. The fair use defense exists to encourage the creation of original works.[6] The Supreme Court in USA held that transformative uses add new material that reflects critically on the original work and they are favored under the first factor and also are assumed to be less likely to damage the copyright owner's markets.[7]

**Protection of Online Publication Under Copyright Act**

Bring a literary work, online publication is protect-able under the copyright. Whilst copyright does not protect ideas, it will protect them once they are fixed in material or tangible form. For example, an idea for a story will not be protected by copyright, once the idea is transferred into writing, then it will be protected by copyright. Likewise, the concept for a website will not be protected by copyright, but as soon as the concept is noted down and/or the code for the website is written, then both the written concept and the website itself will be protected by copyright. The contents available on net are actually present in the

server and does not have any fixed prints on the concrete substance, but it can be printed out anytime on the sheet of paper and further there is the involvement of the creativity for writing such contents, hence the copyright is available to protect the contents on the net.

Copyright is granted to the author of such contents published on the net. He is entitled to freely and exclusively exploit their work, whilst granting or refusing permission for others to copy their work in different ways. These restrictions are permissible because of the ease reproduction of online data through the server. Therefore, copying the work, distributing copies of the work to the public, renting or lending copies of the work to the public, communicating the work to the public, adapting the work, (for example, translating, adapting or abridging a work), performing, playing or showing the work in public, broadcasting the work (which can also include electronic transmission) is permissible only with the permission of the author and further payment of royalty. Author's moral rights[8] are also taken into account in order to sustain respectability towards his/her work.

**Battle between Author and E Publication**

Increasing demand from law schools and growing technology created new debate among authors and publishers. E-publications are becoming new battleground for freelance writers and publishers, with each group seeking the rights to use existing works on these publications. Although publishers ordinarily have the rights to use preexisting content produced by their staff writers under the work-made-for-hire doctrine,[9] authors are sometime not aware about their rights. The usage of their works totally depends on the contracts made by them with the publishers.[10] The issue was aroused in USA court in Tasini v. New York Times.[11] In the case of Tasini, ten freelance writers filed a suit against five companies: The New York Times Co. and Times Mirror Co., both newspaper publishers; Time Warner, a magazine publisher; Mead Data Central, then owners of the LEXIS/NEXIS database services; and University Microfilms, an issuer of CD-ROMs of periodicals. The writers claim that their work was republished on online computer databases and CD-ROMs without their consent. On one side of this dispute are the freelance authors. They consider themselves to be "modern day sweatshop workers" who scrape a living with low salaries and no benefits. They believe that they are entitled to the rights to their works on new media, which would enable them to license the works to the original publisher, if they choose, for reissuance on the electronic media. On the other side are the publishers, who claim that they were granted the rights to use the works when those works were originally conveyed. The publishers deny that electronic rights, or any rights to use a work on a future technology or new medium, must be granted explicitly and separately. Despite their differences, both sides agree on one point: this issue "will have wide-ranging consequences for the publishing industry no matter which side prevails."[12] But in this debate one issue has not been touched since long and it is the issue of the reader or customer who uses or

utilizes this publication. The purpose and commercialization of the art is to be considered while evaluating the fair use of copyright. How much amount of subscription goes to the author? If authors are getting some amount then how it is evaluated? If the commercialization of the research article or knowledge is used by unfair means to make economical gain at the cost of growth of research or innovation then it is the need to rethink the law. Law is not weapon but it is a tool used to prosper the society and betterment of mankind.

**Obstacles under Copyright for Academicians**

The concept of fair deal has not been properly used for the interest of the academicians, students or researchers to enhance their understanding and knowledge towards the available copyrighted material on net. As we have seen today that almost all the online databases are paid or subscribed for accessing the contents therein. Such websites has commercialized the contents for encouraging the efforts of the authors. Actually, in place of putting creative words, authors have begun to work for the commercialized words in order to attain economic gain. Though copyright gives protection and encouragement to the authors it creates monopoly of creators and publishers over these rights. Thus it restricts the user especially researchers, students, professors and knowledge seekers to taste the beauty of the literature. Further, by providing authors and copyright owners with exclusive control over uses of the work, the commercial value of the work increases as works cease to be freely appropriable by the public in search of knowledge. Academic and scholarly communities, start-up businesses, social and cultural activists, and technology developers note the chilling and unwelcome effect of the copyright market on innovation and progress. It is not wrong to say that Copyright does not support the academic interest despite of providing fair use as a defence. The ordinary lay person on the street will have difficulty in understanding the need to "clear rights" before using a copyrighted work.[13] As a result of the conception of literary and artistic works as business assets, rather than creative expressions, copyright owners are today inclined towards exercising exclusive control over these works through law enforcement and technological protection measures to the extent that public access to these works many times becomes very difficult, if not impossible.[14]

What if progress of the sciences and the useful arts however, means holding authors to a higher standard of authorship and creativity, and encouraging authors to undertake a moral responsibility towards the advancement of knowledge for society? What if we remove the economic lenses through which we have conventionally looked through to understand the copyright system and market theory, and replace them with fresh lenses of ethics and moral philosophy to understand an institution with a goal of advancing knowledge in a completely different light? With an age-old philosophy to provide a novel vision for contemporary analysis, will we eventually arrive at a different, more workable solution to promoting the progress of science and the useful arts for society's benefit today?[15] A more cohesive rights based system for authentic

authorship is surely more conducive to the question of literary independence and integrity than a system of ad hoc statutory rights and economic incentives, which forces most authors to surrender their authentic expressions to public tastes in order to receive remuneration for their works, and, which direct the production and dissemination of literary and creative works towards segments of society willing to pay the most for the work.[16] While the market is important to provide a source of remuneration to authors and creators, authorial and artistic integrity in a work of authorship has a more significant bearing on how we progress, develop and improve as a society.[17] Afterall, we should not forget about the public's right to information which is the right for everybody to use freely a piece of information to exercise a freedom guaranteed by law. It is pertinent to mention that the right to information is also the right to obtain information about a work which is protected by copyright, the right to be informed about the work and its content. As copyright only protects the form of the work, the contents of the work does not become a part of it and also the conflict arise when we interlink forms and content of the work. Copyright is available only on the expression as a whole, and not on the parts of such expression.

The copyright act protects the form used by a user to express the content of the literary work. Publisher, online or other, which publishes the articles, judgments, essays have right to protect the form of that work. They can not claim the contents, and they are not claiming, but still how can they charge enormously for their publication? Digital databases, online journals, online databases are charging hefty amounts which are not affordable to the educational institutions in rural part of India. Basically the articles or the more about the judgments delivered by High Courts and Supreme Court can be considered as public documents and can be seen by any person. Then does it not become the public's right of information and if it is a right of public then can these publication are allowed to charge heavy subscription? While considering public right to information, it has to be considered the freedom of communication, as it does not only concern communication but also the addressees of communications, who are the readers, the listeners and the viewers.[18] They are ready to appreciate the work more than anything and what else an author need ultimately, 'praises for his/her work'.

**Suggestions and Conclusion**

The authors of the book or painters of paintings will get remuneration if they can sell their works in the market. However, if the author has got a good patron his literary and artistic production will get broader and varied audience and thus his work capture a large area and thereby he can get popularity and name. The copyright law is nothing but to secure the rights of these persons by way of legal patronage which help them to get remuneration for their creativity and productivity. Authors sell their work to a reading audience, who pays the author the market value, economic theory seeks to encourage authorship by the promise of market rewards, and through the market and thus authors are remunerated for their creativity. Statutory rights ensure that market rewards are appropriable.

At the same, copyright also proposes to enhance the world of knowledge and bring out more progress in science and other fields. Academicians, researchers and students are the players who actually cement the bricks to construct the universe of knowledge. The role of fair use proviso plays a very pertinent role in aligning the monopoly rights secured under Copyright with the academic oriented rights. But still, this provision fails to support the system in the manner as expected. Online publications are demanding high charges for making the contents available to the public. The users are made to pay hefty amount for their research work. This itself bring out the clear picture of non-effect of the fair use provision as such.

It is suggested that the copyright law should bring the balance of academic use and commercial use in such a manner that wherein no one has to pay a high/hefty price for the available contents on the subject than required or necessary to award the author. The objective should be to preserve the knowledge for the society to benefit with and not just to sell it off simple. It is more than a commercial commodity which just not suits the richly class/group but also is equally served to every person who has academic interest. The research should prosper and should not be restricted or placed any legal boundaries for commercial gain.

Copyright is not the subject-matter of any trade or business. The sole reason of introducing such a protection is to mainly encourage authors by giving them recognition for their work. But this objective is highly bent towards the economic goals of the authors and the work has been made a commercial thing which is only created for the purpose to sell. Do you think that the approach of making literature a commercial product is proper or will this work to enhance the knowledge of our society. Do we not deserve the free flow of knowledge from all the ends? Are we not restricting or closing the doors for receiving the ray of enlightenment. Is everything is just for sake of money, business and economic gain? What about the social development, which we all cherish with us for being a human. Is this moral responsibility does not have any say? We need to look for actual solutions for all these. Let's not create any dummy impression that our legal framework is safeguarding the academic or research interest. Infact, we are also contributing somewhere by not raising voice on the question of creating monopoly boundary around our well cherished literary world, when the grabbers are not the thieves.

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9. See 17 U.S.C. ? 101 (1988) It defines a "work made for hire" as, in part, "a work prepared by an employee within the scope of his or her employment"); MARSHALL LEAFFER, in his UNDERSTANDING COPYRIGHT LAW ? 5.2[A]-[B] (1989) describes that the employer is granted all rights unless a written agreement between the employer and employee explicitly states otherwise. A work made for hire may also be "a work . . . commissioned for use as a contribution to a collective work . . . if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire."
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# FREE ACCESS TO LAW MOVEMENT: INDIAN PERSPECTIVES

**Intekhab Alam***

**Abstract**

*Globalization is the process of integrating nations and people – politically, economically and culturally – into a larger community. The Internet is the key factor leading to globalization and information revolution as well. The Internet also led to the information overload and simultaneously speedy and free access to information. Free access to law contributes to equality before law and access to public legal information supports the rule of law. RTI Act felicitated to access general as well as public legal information. Open access to law is a key for providing universal access to legal literature. The FALM is an affiliation of 40 LIIs under Montreal Declaration. LII of India, JUDIS, Indiacode, Indiakanoon and IndLII are Indian players in this movement directly or indirectly. Almost all the law schools and old law department of various universities and BCI publishing their scholarly journals in print formant out of which only two have online presence at DOAJ. India is lagging behind in the field of online publishing and free access to legal scholarly publications. The law schools are in the best position to steward this movement because they have the obligation and also necessary technical resources. The paper concludes that LII should be developed to be the better alternative of the commercial websites then only it would serve the public in real sense.*

**Introduction**

Globalization has been defined as the process of integrating nations and people – politically, economically and culturally – into a larger community. The focus is not on nations but on the entire globe. This complex, controversial and synergistic process combines technology in communication and transportation with the deregulation of markets and open borders to lead to vastly expanded flows of people, money, goods, services and information. The Internet is the key factor leading to globalization and information revolution as well (Germain). The Internet also led to the information overload and simultaneously speedy access to information. The globalization has had a deep impact on the legal profession, legal education, and turn on the law librarian profession and the legal literature (Germain).

Traditionally legal information resources are available in printed format but "the advent of the Internet as a viable information source has signaled the rejection of book-based legal research by contemporary law students and lawyers. Even though studies indicate that lawyers are not especially adept at computer assisted legal research, the trend towards computers, and away from

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books appears to be irreversible" (Gallacher) in America. The trend in India is not changing very fast but it is expected to be fast when the new generation of lawyers, who will be well versed with the online legal research, will come in the profession. Still the trends of legal research in law firms are much forward than the traditional courts.

The expenses of buying and maintaining physical libraries has lead many law firms to rely solely on computer assisted legal research, keeping a few law books more as three-dimensional wallpaper rather than as reference tools (Gallacher).

The cost of printing books is increasing day by day everywhere in the world. A study conducted in law schools in the USA shows that "academic law libraries of all sizes are feeling the squeeze in acquisition funds. Despite the range of acquisitions expenditures reported by the responding libraries, a good number of libraries had already taken action by ceasing to update or cancelling some of their print material, and even more have considered cancellations" (Runyon). It is difficult to predict the situation of law schools in India without a study but it is my personal observation that most of the law libraries have print materials duplicated by electronic resources.

**Need for Free Access to Law**

Free access to law contribute to equality before law (Poulin) and access to public legal information supports the rule of law (Poulin, Mowbra and Lemyre). Since independence in 1947, India has taken long strides towards achieving an environment of access to information including legal information. The Supreme Court has periodically affirmed both the individual rights to know as well as a more general right to information of citizens (Iyengar). The Right to Information Act, 2005 was the result of endeavors towards the getting access to public information in India. Right to Information Act felicitated to access general as well as public legal information.

Everyone has right to know the law of the land free of cost (Singh). Apart from being able to access domestic laws, there is also increasingly a need to access law from other jurisdiction. Business operates on an international basis. Corporations need to be aware of international regulatory requirements and countries need to make their legal systems transparent to encourage international investment and trade. Particularly in the case of developing countries there is a major need for access to international laws to assist with law reform and development (Poulin, Mowbra and Lemyre).

In developing countries, like India, besides the rapidly growing cost of printed legal material it is also difficult for lawyers who represent low-income clients and general public to access the online database like westlaw, lexisnexis, manupatra, SCC Online, AIR database because of the cost factor. Although the Judicial Information System (JUDIS) is open to all to access the judgments of various High Courts and Supreme Court but "except few websites, like those for

the Supreme Court, Delhi High Court and Bombay High Court, other websites, for most of the High Courts are not regularly updated" (Singh). There are limited search options, "there is no subject classification of judgments and one can only search judgments on the basis of the names of the parties, name of judge, date of decision or the number of the case" (Singh). Keyword search have been added to the JUDIS recently.

A great deficiency of JUDIS is that it is not providing citation search and also not have its own standard citation system. Although the citation (citation from printed reporters like AIR, SCC etc.) search is available on the Supreme Court website but not for recent cases because AIR, SCC citations are based on their printed version and it takes few months to make available the printed reporters and citations.

Open access to law is a key for providing universal access to legal literature. It will allow the users to freely read, download, copy, print, distribute, search, link, transfer to the full text of any judgment or law journal article. Although this is not a complete solution for all types of users but can fulfill the needs of those who are unable to access legal documents otherwise.

**Free Access to Law Movement**

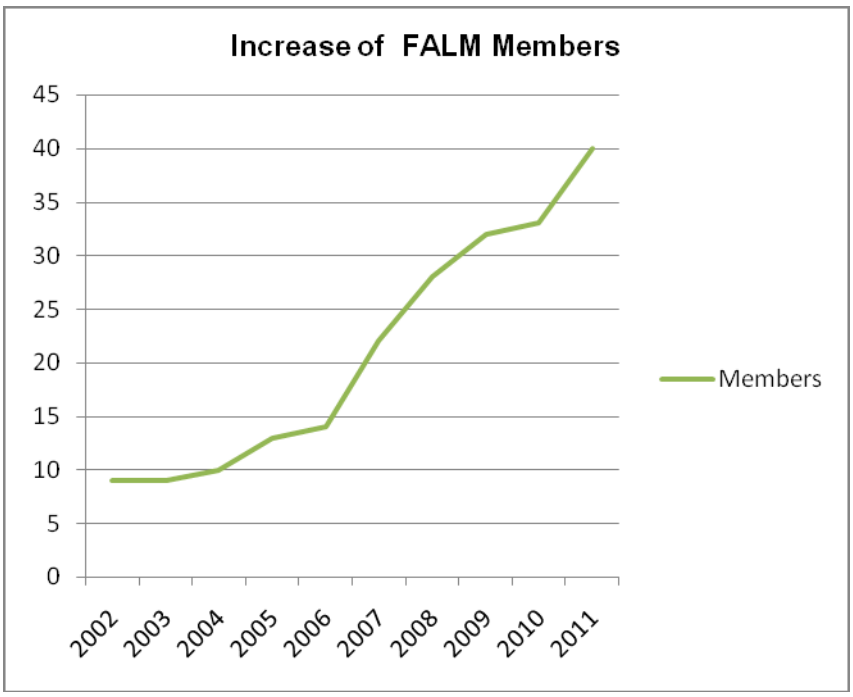
The web technology provided the key elements required for free public access and have potential to provide low cost efficient options (Lal). Open access provides the means to maximize the visibility, and thus the uptake and use of Indian research output. Open access is the immediate (upon or before publication), online, free availability of research outputs without any of the restrictions on use commonly imposed by the publisher copyrights agreements (Swan). Open access to legal information concerns the output of the government as well as judiciary, journal articles, conference proceedings, commentaries, treatise, other legal reference sources and database related to international laws and many more.

In many countries the first attempt to exploit the advantages of the web for providing legal information came from the academic sector rather than government, and did so with an explicit ideology of free access provision. Within a few years of the formation of the first legal information institute in 1992, the first group of such organizations became known collectively as 'Legal Information Institute' or 'LIIs' and those expressions became synonymous with free access to legal information, though in fact they have a narrower meaning (Greenleaf).

The Free Access to Law Movement (FALM) is a loose affiliation of legal information institutes. It meets annually if possible during the 'Law via Internet' Conference, and by e-mail between conferences. The first sustained attempt to build some form of international network took place at the LII Workshop on Emerging Global Public Legal Information Standards hosted by LII (Cornell) in July 2000, involving participants from the US, Canada, Australia and South

Africa. The Expression 'World LII' was first used there to describe a collaborative LII portal. The FALM was then formed at the 2002 'Law via Internet' Conference in Montreal, and adopted the declaration on free access to law, sometimes called the 'Montreal Declaration' (Greenleaf, Legal information institute and the free access to law movement).

The Montreal Declaration was made by Legal Information Institutes meeting in Montreal in 2002 and amended three times, since its inception, at meetings in Sydney (2003), Paris (2004) and Montreal (2007). As on December 24, 2011, there are 40 members of the FALM. The following chart shows the increase in number of FALM member during first decade of its formation.




(*Data Source*: www.fatlm.org accessed December 24, 2011).

**Legal Information Institute of India (LII of India)**

The Legal Information Institute of India is an institute established in 2010 and launched in March 2011 to fulfill the aims and objectives of the Free Access to Law Movement. LII of India joined the FALM in 2010. It provides free online access to legal resources of India. Legislations of Central, State and Union Territories with case laws, treaties and academic legal resources (LIIofIndia).

LII of India, at present, has 151 database, including decisions from various Indian courts and tribunals, Indian legislations from 1836, over 800 bilateral treaties, law reform reports and full text journal articles from 12 law journals. The details of Indian Journals available on LII of India is as follows:

| Sl. No. | Journal Title | Publisher | Coverage | Years | No. of Articles | Up-to-date |
|---|---|---|---|---|---|---|
| 1 | GNLU Journal of Law, Politics and Development | GNLU, Gandhinagar | 2009 | 1 | 18 | No |
| 2 | Indian Journal of Intellectual Property Law | NALSAR University of Law, Hyderabad | 2008 to 2010 | 3 | 26 | No |
| 3 | Indian Journal of Law and Economics | NALSAR University of Law, Hyderabad | 2010 | 1 | 9 | No |
| 4 | Indian Journal of Constitutional Law | NALSAR University of Law, Hyderabad | 2007 to 2010 | 4 | 44 | No |
| 5 | Indian Journal of Law and Technology | NLSIU, Bangalore | 2005 to 2008 | 4 | 17 | No |
| 6 | ISIL Year Book of International Humanitarian and Refugee Law | Indian Society of International Law, New Delhi | Not Available | Not Available | Not Available | |
| 7 | Journal of Intellectual Property Rights | NISCAIR, New Delhi | 2002 to 2010 | 9 | 324 | No |
| 8 | NALSAR Environmental Law and Practice Review | NALSAR University of Law, Hyderabad | 2011 | 1 | 10 | Yes |
| 9 | NALSAR Law Review | NALSAR University of Law, Hyderabad | 2003 to 2011 | 9 | 61 | Yes |
| 10 | NALSAR Media Law Review | NALSAR University of Law, Hyderabad | 2010 to 2011 | 2 | 21 | Yes |
| 11 | NALSAR Student Law Review | NALSAR University of Law, Hyderabad | 2005 to 2011 | 7 | 40 | Yes |
| 12 | NUJS Law Review | NUJS, Kolkata | 2008 to 2009 | 2 | 72 | No |

(*Data Source*: http://liiofindia.org/in/journals/ accessed December 24, 2011).

The table depicts that out of 12 Journal Database 7 are created by the NALSAR, Hyderabad alone. Other stakeholders should also follow the NALSAR in this movement. Here it is also noticed that only 1/3 of databases are up-to-date.

**Government of India Initiatives**

Government of India has taken initiative to make available the legal information through Internet. National Informatics Centre (NIC) has developed few legal information systems based on the legal information generated by the Indian Judiciary.

**INDIAN COURTS:** The Indian Courts is a bouquet of Websites of the Supreme Court and all 21 High Courts and their Benches in India. It provides a single point access to information related to the Supreme Court and any High Court in India. The Website of the Supreme Court and High Courts provide litigant centric dynamic information like Judgments, Causelists, Case-status, etc. as well as static information such as History, Jurisdiction, Rules, past and present judges, etc. (India Courts)

**JUDIS:** The Judicial Information System consists of the full text judgments of the Supreme Court of India and several High Courts. In the case of Supreme Court all reported judgments which are published in SCR Journal, since its inception i.e. 1950 till date are available free of cost. The judgments reported in SCR till 1993 also have head-notes. The judgments reported in SCR in 1994 and later have only text of judgments without head-notes. The Cases may be searched by the name of petitioner or respondent. We can also search with name of judge, case number, date of judgment, act wise, held wise and citation of the following reporters: AIR, SCR, SCC, JT & SCALE. Alphabetical case indexing can also be done for a specified period with the name of petitioner or respondent to check the entries. (JUDIS)

**INDIACODE:** The India Code Information System contains all Central Acts of Parliament right from 1834 onwards. Each Act includes: Short Title, Enactment Date, Sections, Schedules and also very significant foot-notes in every act. Besides this, Statement of Object Reasons, Table of contents and Status of an Act is also available. (India Code)

**India Legal Information Institute (IndLII)**

IndLII was established on November 25, 2006 to provide a platform where concrete efforts would be made to fulfill the objectives of providing free legal information to all. The mission statement of the Institute states that everyone has right to know the law of the land free of cost. To fulfill the aspiration, the institute undertakes to

- collect legal information about India from all available sources;
- publish the material on the Internet with free and full access;
- grant rights to the public to use the legal resources without any restriction;
- create awareness about the availability of free legal resources;
- remove hurdles coming in the way of providing free legal information;
- coordinate with other institutions of the world to explore sources and utilization of legal information

The aim of the institute is to provide all Central Acts, State Acts, Rules and Regulations on the Internet. Efforts are underway to provide all the Supreme Court judgments and 21 High Courts' judgments on this website with subject and Act/Section indices and to provide judgments of quasi judicial bodies like the Central Administrative Tribunal, National Consumer Redressal Commission and Copyright Board on this site (Singh). IndLII is a Charitable Not-For-Profit Trust and have no regular funding resource either from the Government or from the other stakeholder in the world (Singh). This website is not a formal member of the FALM but providing free access to legal information resources. The resources available on this website under various categories are not enough.

**Indian Kanoon (IK)**

Indian Kanoon was publicly announces on the 4th of January 2008 and began offering access to Indian Supreme Court cases and the text of central legislations. Its genesis was not in response to the need for easily access to legal information but the result of a Computer Science Doctoral Experiment designed by Sushant Sinha form Michigan University, who was researching ways in which data could be interrelated automatically (Iyengar). IK has grown exponentially and has become one of the most popular websites for accessing Indian legal material, hosting as over 1.2 million documents (as on July 2010) (Iyengar). IK is providing free access to the legal resources and its database are structured by "breaking law documents into smallest possible clause and by integrating law/statutes with court judgments. A tight integration of court judgments with laws and with themselves allows automatic determination of the most relevant clauses and court judgments." (Indiakanoon).

**Indian Open Access Journals and Law Schools**

The basic idea behind the open access is that "all scholarly work should be made available on the Internet for free, in a format that allows all to read it without restrictions" (Hunter). Almost all the law schools and old law department of various universities and Bar Council of India publishing their scholarly journals in printed formant out of which online journals are only few. If we look at the Directory of Open Access Journals (DOAJ) only two Indian law journals are listed in this directory. The most popular journals like JILI, IBR, CULR, IJIL, IJCC, KULR etc. are not available online. Even some of the printed journals are not publishing their issues within due time or publishing annually instead of quarterly. The time has come for legal scholars and scholarly journals in India to join the movement for open access. India is lagging behind in this field. The law schools are in the best position to steward this movement because they have the obligation and also necessary technical resources.

**Conclusion**

Information reliability, authenticity, precision, accuracy, version control are the challenged posed by the digital environment besides these factors userfriendliness, searching interface, completeness, timely updation, format of information, citation and also the awareness about the free information resources are other factors to be considered in free access to law movement. Law librarians need to be considered as core participants in the mission of LII of India and law librarians also need a professional network to play a vital role in the free access to law revolution. The experience of law librarians can improve the efficiency of the LII of India.

All the law schools should develop a common digital repository of their scholarly publications instead of publishing their one or more journals separately. According to the special Committee on Open Access Applications for

Legal Information of the American Association of Law Libraries (Open Access Task Force) "Open access could provide greater exposure to faculty scholarship and might also provide greater exposure to less prestigious journals" (Paul). Instead of publishing printed journals, it is a good opportunity and time to start e-publishing to participate in this movement. Not only law schools but also the Bar Council of India as well as State Bar Councils and law firms should come forward to join this movement.

In the last it is proposed that the Legal Information Institute of India should be developed in such a way that I could be the better alternative of the commercial websites then only it would serve the public in real sense.

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# OPEN ACCESS SCHOLARLY E-JOURNALS ON LAW: A BIBLIOMETRIC STUDY

**Dr. Bidyut K. Mal**
**Rakesh Mohindra***

**Abstract**

With the advent of the Internet and electronic publishing, new models of scholarly communication have emerged that simultaneously complement and challenge established systems. Open Access is taken broadly to mean that accessing, downloading, and reading material is free to the entire population of Internet users, several options for the provision of that access have emerged. *Library should introduce to their users to access full text e-books, e-journals, e-database those are freely accessible from Internet. This paper deals with scholarly and peer reviewed open access journals accessible from Directory of Open Access Journals (DOAJ) in law. Analyzed based on country, publishers, subject heading, keywords, availability of archives, frequency, indexed by, length of publishing period, total viewers etc.*

**Introduction**

Librarianship has shifted from use of printed and manually operated system to world wide access to information. Libraries these days have consortia, and use electronic resources and databases so that they can provide better services to the users. Modern libraries have evolved from paper-based storehouse of books and journals into distributed network of digitized information and knowledge, now known as digital libraries. Now access of information is no longer restricted to what is physically available in a particular library. Information is accessible from a wide variety of globally distributed commercial repositories such as electronic publishers and aggregators with access charge. However, it is also accessible from open access journals, open access archives, few websites and institutional repositories free of charge. Now libraries can enable worldwide access to a never-ending supply of distributed information and knowledge in electronic form that is constantly available, easily updated and convenient to use.[1]

**Open Access**

Open access to scholarly information has been a hot topic for debate among librarians, scholars, and publishers over the last few years. The open access movement addresses by arguing for the free availability of literature on the

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public internet, permitting any users to read, download, copy, distribute, print, search or link to the full texts of these articles, crawl them for indexing, pass them as data to software, or use them for any other lawful purpose, without financial, legal or technical barriers other than those inseparable from gaining access to the internet itself. One of the great benefits to open access is that libraries in smaller institutions or in economically disadvantaged areas around the world can have greater access to this scholarly resources.[2]

**Open Access Journal**

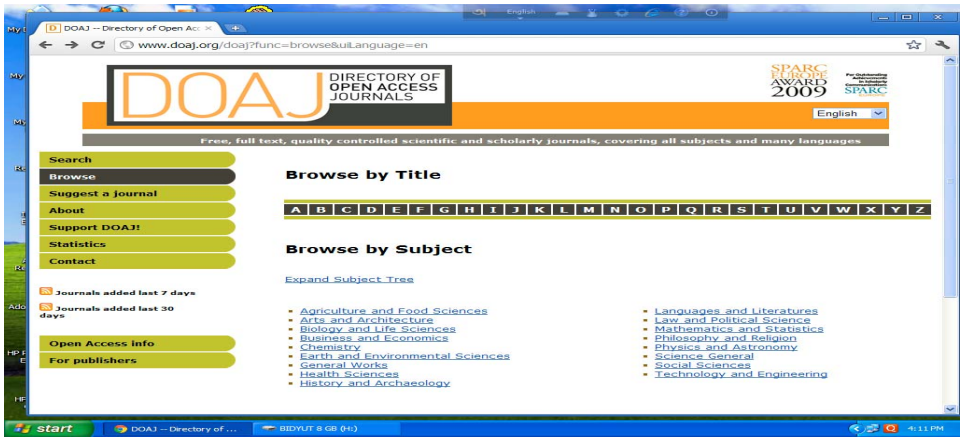
Open access journals are scholarly journals that are available online to the reader "without financial, legal, or technical barriers other than those inseparable from gaining access to the Internet itself. Some are subsidized, and some require payment on behalf of the author. Subsidized journals are financed by an academic institution or a government information center; those requiring payment are typically financed by money made available to researchers for the purpose from a public or private funding agency, as part of a research grant. There have also been several modifications of open access journals that have considerably different natures: hybrid open access journals and delayed open access journals.[3] The increasing growth of online OA journals in various disciplines is evident of various online directories. Directory of Open Access Journal is one of the most popular directory among them.

**Directory of Open Access Journal (DOAJ)**

The Directory of Open Access Journals (DOAJ) is website maintained by University which lists open access journals. The project defines open access journals as scientific and scholarly journals that meet high quality standards by exercising peer review or editorial quality control and "use a funding model that does not charge readers or their institutions for access." The Budapest Open Access Initiative's definition of access is used to define required rights given to users, for the journal to be included in the DOAJ, as the rights to "read, download, copy, distribute, print, search, or link to the full texts of these articles".

The DOAJ contained only 125 titles in 1991. In February 2005, it contained 1400. This number has increased up to 2986 in February 2008.[4] In October 2011, the database contained 7116 journals, with an average of four journals being added each day for the month of September. The aim of DOAJ is to "increase the visibility and ease of use of open access scientific and scholarly journals thereby promoting their increased usage and impact."[5]

**Screen snapshot of DOAJ**




**Objectives of the study**

- To enumerate the free e-journals on Law in DOAJ
- To analyze the top-level-domain on Law in DOAJ
- To know the country wise publication on Law in DOAJ
- To know the accessibility of archives of e-journal on Law in DOAJ
- To enumerate the frequency of free e-journals on Law in DOAJ
- To know the year wise publication on Law in DOAJ

**Research Methodology**

Directory of Open Access Journals (DOAJ) website (http://www.doaj.org) is browsed for the present paper. 128 e-journals on Law were searched out which is accessible till 20.11.12 from DOAJ in various languages. Out of 128 e-journals, 44 published in English language are taken for the present study those are analyzed by origin of country, domain wise, frequency of publication, starting year of publication, containing volumes in archives, charging publication fee and indexed by international directory and databases etc.

**Analysis and interpretations**

**Table 1: List of e-journals of Law discipline in DOAJ**

| Sl. No. | Name of Journal | Publisher | ISSN / EISSN | Website |
|---|---|---|---|---|
| 1 | AGORA International Journal of Juridical Sciences | AGORA University Publishing House | 1843-570X/ 2067-7677 | http://www.juridicaljournal.univagora.ro/ |
| 2 | Amsterdam Law Forum | VU University Library | 1876-8156 | http://www.amsterdamlawforum.org/ |

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|---|---|---|---|---|
| 3 | Asian-Pacific Law & Policy Journal | University of Hawaii | 1541-244X | http://www.hawaii.edu |
| 4 | Beijing Law Review | Scientific Research Pub. | 2159-4627/ 21594635 | http://www.scirp.org/Journal/blr |
| 5 | Bulletin of the Transilvania University of Braşov, Series VII | Bulletin of the Transilvania Univ of Braşov Pub. House | 2066-7701/ 2066-701X | http://but.unitbv.ro/BU2009 |
| 6 | Comparative Law Review | Polimetrica Publisher | 2038-8985/ 2038-8993 | http://www.comparativelawreview.com |
| 7 | Connecticut Public Interest Law Journal | The University of Connecticut School of Law | 1932-2038/ 1932-2046 | http://www.law.uconn.edu |
| 8 | Duke Environmental Law and Policy | Duke University School of Law | 1064-3958 | http://delpf.law.duke.edu |
| 9 | Duke Journal of Comparative and International Law | Duke University School of Law | 1053-6736 | http://djcil.law.duke.edu/ |
| 10 | Duke Journal of Gender Law and Policy | Duke University School of Law | 1090-1043 | http://djglp.law.duke.edu/ |
| 11 | Duke Law Journal | Duke University School of Law | 0012-7086 | http://dlj.law.duke.edu/ |
| 12 | E Law – Murdoch University Electronic Journal of Law | Murdoch University School of Law | 1321-8247 | https://elaw.murdoch.edu.au/ |
| 13 | Entertainment and Sports Law Journal | Electronic Law Journals Project | 1748-944X | http://www2.warwick.ac.uk |
| 14 | Erasmus Law and Economics Review | Erasmus Law and Economics Student Society | 1824-3886 | http://www.eler.org |
| 15 | European Journal of Law and Technology | Qeen's University of Belfast | 2042-115X | http://ejlt.org/ |
| 16 | Federal Courts Law Review | Federal Courts Law Review | 1936-2463 | http://www.fclr.org |
| 17 | Gottingen Jr of International Law | Universitatsverlag Gottingen | 1868-1581 | http://www.gojil.eu/ |
| 18 | Harvard Human Rights Journal | Harvard Law School | 1057-5057 | http://harvardhrj.com/ |
| 19 | Human Rights and Human Welfare | University of Denver | 1533-0834 | http://www.du.edu |
| 20 | International Free and Open Source Software Law Review | International Free and Open Source Software Law Review | 1877-6922 | http://www.ifosslr.org |

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|---|---|---|---|---|
| 21 | International Journal for Court Administration | International Association for Court Administration | 2156-7964 | www.iaca.ws |
| 22 | International Journal for Criminal Investigation | AIT Laboratories | 2247-0271 | http://www.ijci.eu/ |
| 23 | International Journal of Legal Information | International Association of Law Libraries | 0731-1265 | http://scholarship.law.cornell.edu |
| 24 | International Journal of Non-for-Profit Law | International Center of Non-for-Profit Law | 1556-5157 | |
| 25 | The Internet Journal of Law, Healthcare and Ethics | Internet Scientific Publications, LLC | 1528-8250 | http://www.icnl.org |
| 26 | JIPITEC: Journal of Intellectual Property, Information Technology and E-Commerce Law | Digital Peer Publishing | 2190-3387 | http://www.jipitec.eu/ |
| 27 | Journal of Information, Law and Technology | University of Warwick | 1361-4169 | http://go.warwick.ac.uk/jilt |
| 28 | Journal of Intellectual Property Rights | NISCAIR | 0971-7544/ 0975-1076 | http://nopr.niscair.res.in |
| 29 | Journal of International Commercial Law and Technology | International Association of IT Lawyers | 1901-8401 | http://www.jiclt.com |
| 30 | Journal of Law and Family Studies | University of Utah | 1529-398X | http://epubs.utah.edu |
| 31 | Journal of Legal Analysis | Oxford University Press | 2161-7201 | http://jla.oxfordjournals.org/ |
| 32 | Journal of Philosophy, Science and Law | The Journal of Philosophy, Science and Law | 1549-8549 | http://www6.miami.edu |
| 33 | Journal of Politics and Law | Canadian Center of Science and Education | 19139047/ 19139055 | http://ccsenet.org/journal/index.php/jpl/index |
| 34 | The Jury Expert | American Society of Trial Consultants | 1943-2208 | http://www.astcweb.org |
| 35 | Law and Contemporary Problems | Duke University School of Law | 0023-9186 | http://lcp.law.duke.edu/ |
| 36 | Law Review | Union of Jurists of Romania | 2246-9435 | http://www.internationallawreview.eu/ |

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|---|---|---|---|---|
| 37 | Law, Social Justice and Global Development | University of Warwik | 1467-0437 | http://www2.warwick.ac.uk |
| 38 | Merkourios: Utrecht Journal of International and European Law | Igitur: Utrecht Pub. And Archiving Services | 0927-460X | http://www.merkourios.org |
| 39 | Michigan Telecommunications and Technology Law Review | University of Michigan | 1528-8625 | http://www.mttlr.org |
| 40 | Mizan Law Review | St. Mary's University College | 1998-9881 | http://ajol.info |
| 41 | Northwestern Journal of Tech and Intellectual Property | Northwestern University School of Law | 1549-8271 | http://scholarlycommons.law.northwestern.edu |
| 42 | Open Forensic Science Journal | Bentham Open | 1874-4028 | http://www.benthamscience.com |
| 43 | Open Law Journal | Bentham Open | 1874-950X | http://www.benthamscience.com |
| 44 | Public Space: The Journal of Law and Social Justice | UTSePress, University of Technology | 1835-0550 | http://epress.lib.uts.edu.au |

Table -1 shows the list of Law journals, which are accessible free by name, publisher, ISSN/E-ISSN no. with website so any user can search the required journal easily.

**Table 2: Subject keywords**

| Sl No. | Name of Journal | Keywords |
|---|---|---|
| 1 | AGORA International Jr of Juridical Sciences | criminal law, civil law, forensic medicine, criminology |
| 2 | Amsterdam Law Forum | international law, international relations |
| 3 | Asian-Pacific Law & Policy Journal | law, Asia |
| 4 | Beijing Law Review | civil law, criminal law, economic law, environmental law, public int. law |
| 5 | Bulletin of the Transilvania University of Braşov, Series VII | sociology, anthropology, psychology, pedagogy, social work, law, philosophy, history |
| 6 | Comparative Law Review | comparative law, international law, legal theory, judicial practice, public policy |
| 7 | Connecticut Public Interest Law Journal | law |
| 8 | Duke Environmental Law and Policy | law, environmental law |
| 9 | Duke Jr of Comparative and International Law | law |

| | | |
|---|---|---|
| 10 | Duke Journal of Gender Law and Policy | law, gender |
| 11 | Duke Law Journal | law |
| 12 | E Law – Murdoch University Electronic Jr of Law | law |
| 13 | Entertainment and Sports Law Journal | socio-legal studies, football, entertainment law |
| 14 | Erasmus Law and Economics Review | law, economics |
| 15 | European Journal of Law and Technology | law, technology, intellectual property, computer crime, e-commerce, privacy, data protection, patents, copyright, trademarks, e-governance |
| 16 | Federal Courts Law Review | law |
| 17 | Gottingen Journal of International Law | European law, international relations |
| 18 | Harvard Human Rights Journal | human rights, civil rights |
| 19 | Human Rights and Human Welfare | human rights, human security, humanitarianism, development |
| 20 | International Free and Open Source Software Law Review | free and open source software, open source software, law, copyright |
| 21 | International Journal for Court Administration | International Association for Court Administration |
| 22 | International Journal for Criminal Investigation | forensic science, print identification & analysis, fingerprints, toxicology |
| 23 | International Journal of Legal Information | library and information science, librarianship, law libraries, legal literature, legal information research |
| 24 | International Journal of Non-for-Profit Law | civil society, law, legislation |
| 25 | The Internet Jr of Law, Healthcare and Ethics | ethics, healthcare, medical law |
| 26 | JIPITEC: Journal of Intellectual Property, Information Technology and E-Commerce Law | intellectual property, electronic commerce law, European law |
| 27 | Journal of Information, Law and Technology | law |
| 28 | Journal of Intellectual Property Rights | patents, copyright, trademark, designs |
| 29 | Journal of International Commercial Law and Tech. | international commercial law, business law, IT law, information technology |
| 30 | Journal of Law and Family Studies | family studies, domestic relations, sociological jurisprudence, law |
| 31 | Journal of Legal Analysis | legal theory |
| 32 | Journal of Philosophy, Science and Law | philosophy, science, law |
| 33 | Journal of Politics and Law | politics, law, international relations, government research |
| 34 | The Jury Expert | law, communication, social sciences, psychology |
| 35 | Law and Contemporary Problems | law |

| | | |
|---|---|---|
| 36 | Law Review | universal jurisdiction, comparative law, European Union law |
| 37 | Law, Social Justice and Global Development | social justice, law, human rights |
| 38 | Merkourios: Utrecht Journal of International and European Law | international law, European law |
| 39 | Michigan Telecommunications and Technology Law Review | law, technology law, patents, trademarks, copyright, biotechnology, pharmaceutical, internet law |
| 40 | Mizan Law Review | national law, Ethiopian law |
| 41 | Northwestern Journal of Technology and Intellectual Property | law, biotechnology, copyrights, Internet, media, patents, telecommunications, trademarks |
| 42 | Open Forensic Science Journal | criminal justice administration, forensic medicine |
| 43 | Open Law Journal | international law |
| 44 | Public Space: The Jr. of Law and Social Justice | legal theory, social justice, cross-discipline |

Table-2 indicates the useful keywords for searching e-journals on law in DOAJ.

**Figure 1: Distribution of top-level-Domain**

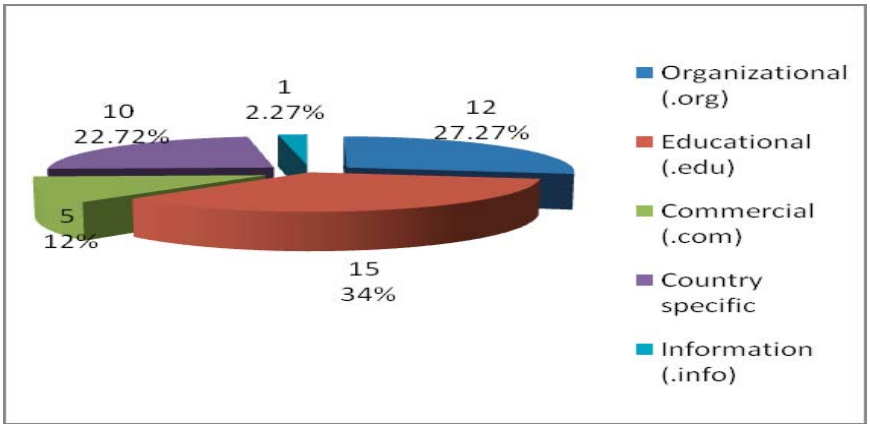


Figure-1 shows the top-level-Domain (TLD) distribution of OA e-journals from the Web addresses. Out of 44 e-journals, highest number i.e. 15 (34%) are from educational (.edu) domain followed by 12 (27.27%), 10 (22.72%), 5 (12%) and 1(2.27%) from Organizational (.org), country specific, Commercial (.com) and Information (.info) domain respectively.

**Figure 2: Origin of country**

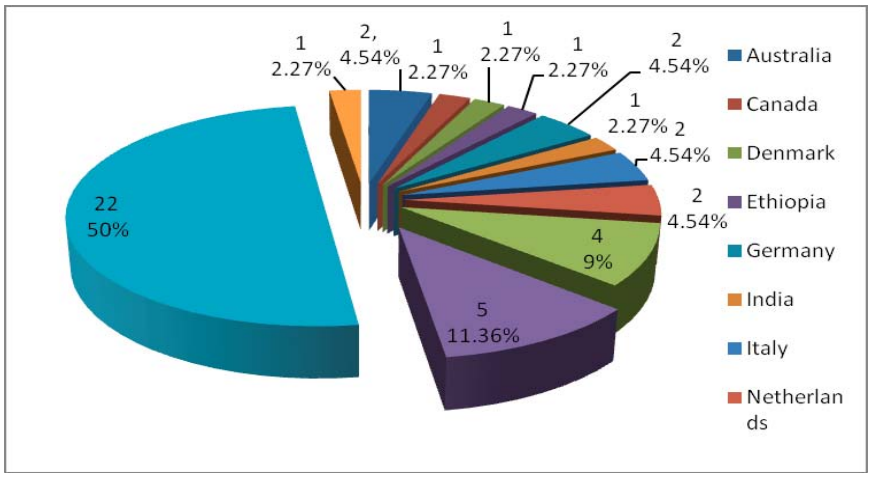


Figure-2 depicts the origin of country wise distribution of OA e-journals. United States is publishing highest number of e-journals i.e. 22 (50%) followed by United Kingdom 5 (11.36), Romania 4 (9%), Australia, Germany, Italy and Netherlands 2 (4.54%) and Canada, Denmark, Ethiopia, India and United of Utah 1 (2.27%).

**Figure 3: Frequency of publication**

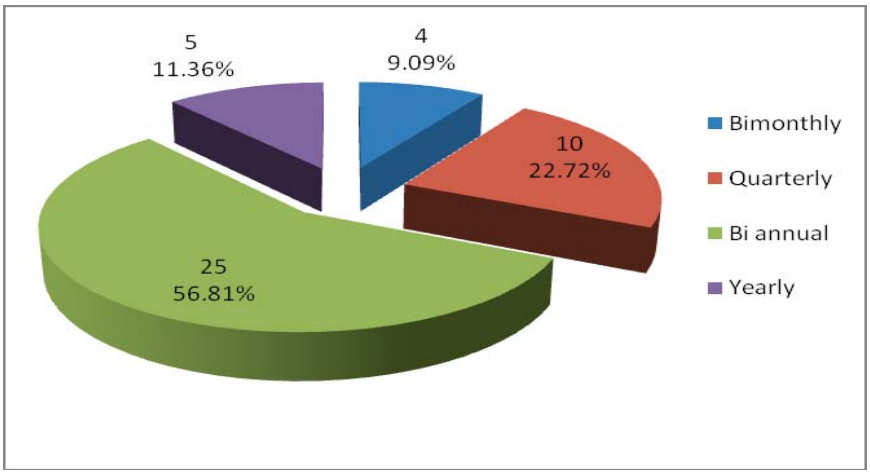


Figure-3 gives the information about the frequency of publication of OA e-journals. Maximum numbers i.e. 25 (56.81%) e-journals are publishing bi annually, followed by 10 (22.27%), 5 (11.36%) and 4 (9.09%) are Quarterly, Yearly and Bimonthly.

**Figure 4: Year of first publication**

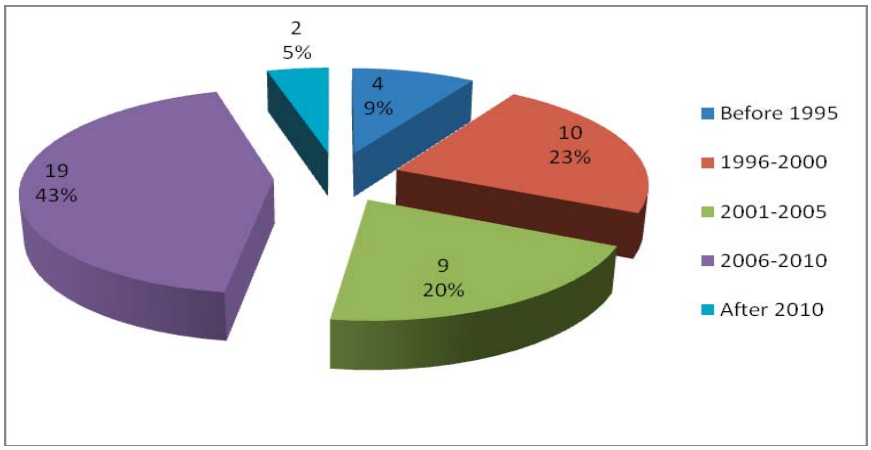


Figure-4 show the details of the distribution of first publishing year of OA e-journals. The highest number of e-journals i.e. 19 (43.18%) started to publish from 2006-2010 followed by 10 (22.72), 9 (20.45%), 4 (9.09%) and 2 (4.54%) from between 1996-2000, 2001-2005, before 1995 and after 2010 respectively.

**Figure 5: Number of volumes containing in archives**

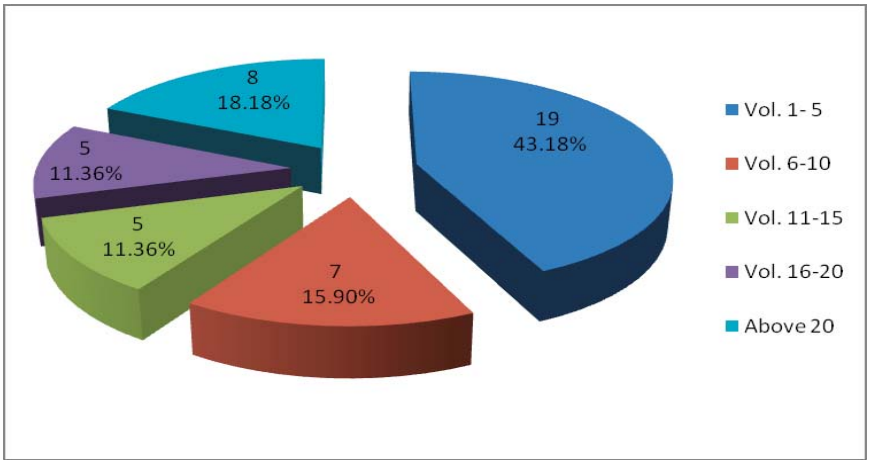


Figure-5 deals with the numbers of volumes containing in archives. Maximum numbers of e-journals i.e. 19 (43.18%) containing only 1-5 volumes followed by 8 (18.18%), 7 (15.90%), and 5 (11.36%) from above 20 Vol., Vol. 6-10, Vol. 11-15 and Vol. 16-20 respectively.

**Figure 6: Peer reviewed publication**

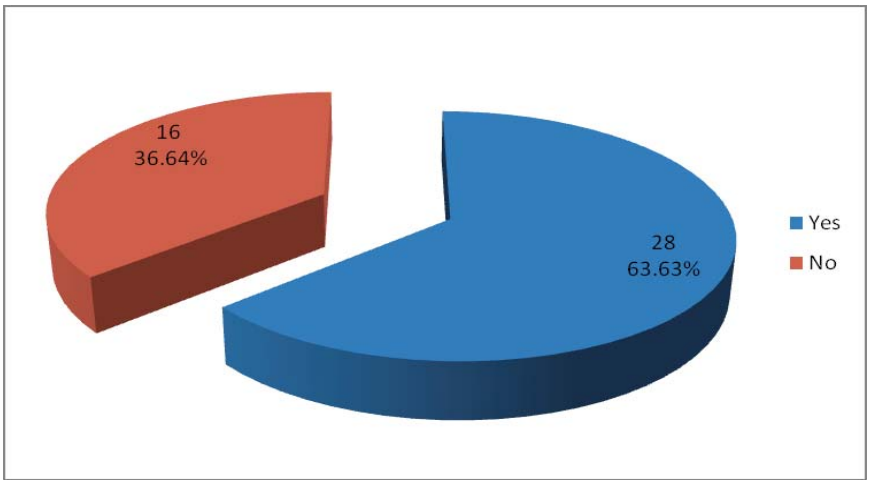


Figure-6 shows the information regarding peer reviewed publications. Maximum number i.e. 28 (63.63%) e-journals are peer reviewed where as only 16 (36.64%) are not following peer reviewed process.

**Figure 7: Refereed and non refereed journal**

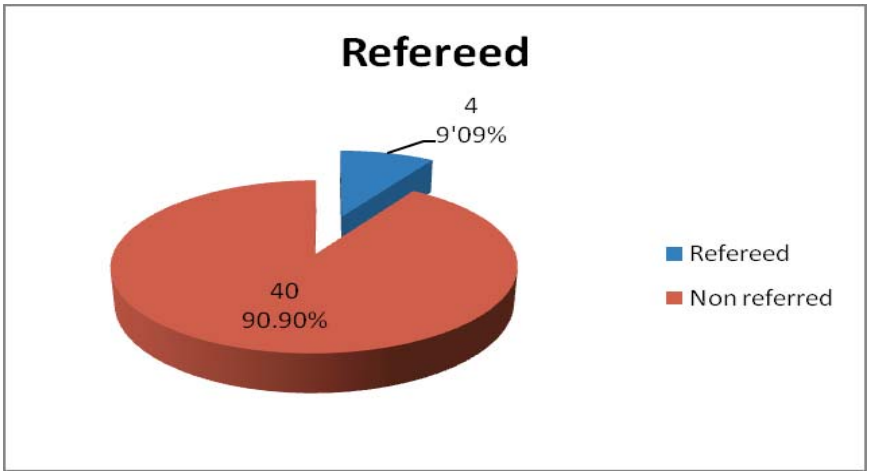


Figure-7 shows the information regarding refereed and non refereed journal. Maximum number i.e. 40 (90.90%) e-journals are non referred where as only 4 (9.09%) are refereed.

**Figure 8: Charging publication fee**

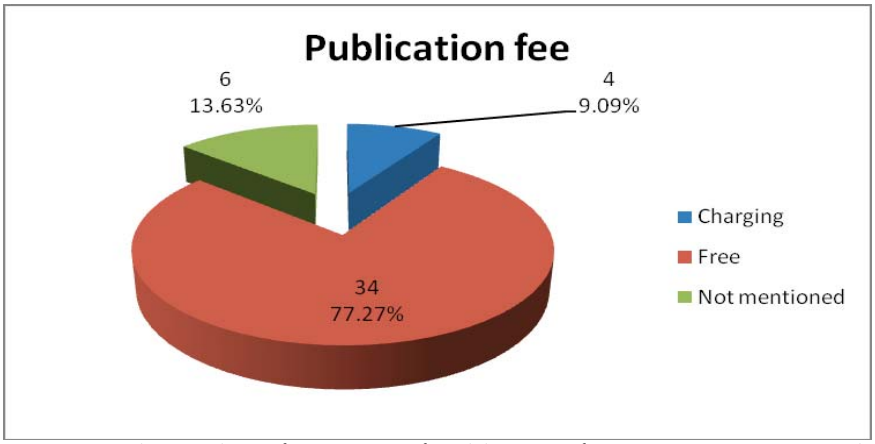


Figure-8 shows the information of publication fee. Maximum e-journals i.e. 34 (77.27%) are publishing fee of cost where as 6 (13.63%) are charging publication fee but 4 (9.09%) journals did not mention in this regard.

**Figure 9: Impact factor**

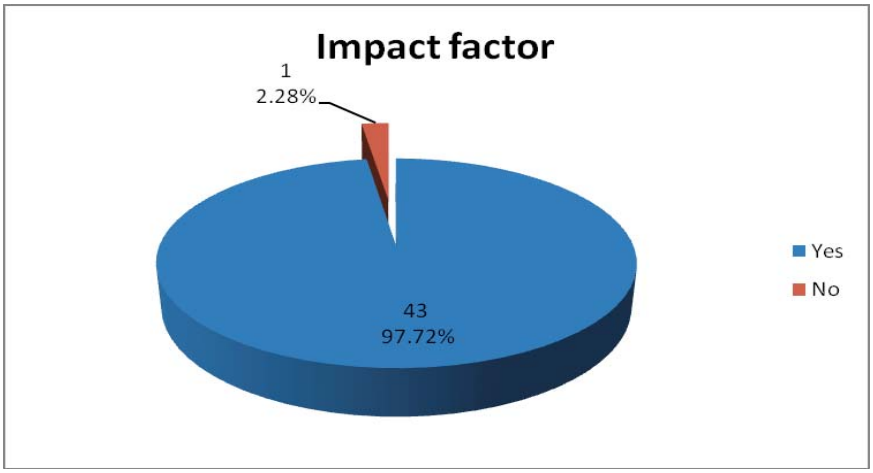


Figure-9 indicates about the impact factor of e-journals. Only 1 (2.28%) e-journals shows their impact factor that is publishing from India whereas 43(97.72%) journals do not show their impact factor.

**Conclusion**

Open Access journals are one of the best solution for the academic libraries, those do not have sufficient budget for e-journals. Among the OA e-journals of DOAJ in law discipline would help the organizations that cannot afford to subscribe or purchase expensive e-journals. This listing should be updated from user end and the websites need to be up to date, down loading and storing them

involves copyright and IPR issues. DOAJ is to increase the visibility and ease of use of open access scientific and scholarly journals their by promoting their increased usage and impact. Research scholar, faculty members, law professionals can brows the open access e-journals from DOAJ site to access the free online journals on law discipline. Research scholars, faculty members, students and law professionals can publish their research work in online open access journals for wider visibility of their research work and for greater impact factor and citation index.

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# PART-III:
# IPR & COPYRIGHTS

# COPYRIGHT AND COLLABORATION: THE FUTURE OF ACADEMIC LAW LIBRARIES

**Jonathan A. Franklin***

Knowledge of copyright and licensing law has become essential to being a modern law librarian. It arises in numerous areas vital to libraries, such as inter-library loan, supporting scanning stations, managing courseware websites, understanding your OPAC's open-source license, digitizing content, and preserving digital content that came from another sources.

The goal of this chapter is to highlight future directions for academic law librarianship and suggest that knowledge of copyright and licensing law is likely to become more, rather than less, important. This is due, in part, to the trend toward increasing patron demand for digital content, which requires making copies in memory and on hard drives, rather than loaning out the same physical work time-after-time. It is also due to the greater aspirations of law libraries in general. Instead of merely serving our geographically local user base, we now attempt to make content accessible to anyone, anywhere, at any time. With this new set of goals, we become more like publishers and hence enter new legal realms.

I will discuss five areas that US academic law libraries are exploring and how a knowledge of copyright and licensing law is essential to those efforts. The five areas are licensing digital content, creating digital archives, managing institutional repositories, preserving print and digital content, and coordinating consortial arrangements.

The library is no longer primarily its collection. The modern academic law library serves at least three functions- as a print and digital collection, a space for reading and study, and a service where the library staff can meet the changing needs of its users. As the efforts of the staff increase to keep up with the diverging needs of our patrons, including computer assistance, empirical research, non-legal research, and the desire for remote and 24/7 access. As the demands and expectations increase, the library becomes a more complicated and demanding place for the staff to work.

**Licensing Digital Content**

In the past, the acquisition of books and most print materials was fairly straight forward. Some print materials were harder to obtain than others and the cost was not always low, but a basic collection was within the reach of most law schools. With time, and cancellations of print volumes, those volumes that are purchased have become more and more expensive, particularly case reporters

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and annotated codes.[1] In part, this is due to the transition to digital content generally, and more specifically, the reliance on online sources for full-text searching of free and licensed case law databases.

Over the past ten years, the idea that a library can have reliable access to legal materials in digital form without owning the content or physically possessing and controlling it has become increasingly accepted. Although in retrospect this policy might be unwise, it is truly a necessity given shrinking law library budgets. However, unlike the purchase of print materials, which is relatively straight forward, the licensing and use of digital content is far more complex. Licenses have not become standardized liability clauses in such licenses mayexpose the library to liability in a way it has never been exposed before. The primary example is if the end user of the database misuses the content, should the library be liable if the staff should have known of the misuse and failed to act?[2] Database publishers are primarily concerned that patrons will download substantial portions of their database and repost it on a publicly accessible website. The concern in this area is that the ethos of librarians includes refraining from intereference with the research of patrons. We do not want to become copyright or license police, as that would stifle the patron-librarian relationship. At the same time, end users have the ability to do far more economic damage to database creators than ever before, through copying and publicly posting the contents of the database to the Internet.

In addition to liability clauses, licenses also require librarians to understand choice of law and forum, use on mobile devices, the technicalities of how e-books may and may not be loaned, and whether the materials are useable in courses and for filling interlibrary loan requests.[3] There is a substantial literature on this topic within this volume,[4] so I will not repeat the specific concerns, but will note that different countries have different laws about the relationship between copyright and licenses. For example, in the United States, licenses may conflict with and override copyright law. In India, that is not the case.[5] Indian database licenses, therefore, are likely to be more favorable to libraries than the same licenses in the United States.

It is unclear how these trends will evolve and what the role of the law library will be in providing information to patrons in 20 years. Will we license content from online bookstores to provide to students, faculty, and perhaps public patrons who cannot pay? Will we become more of a service industry where everyone can read vast quantities of open access content, and we will provide quality control for those sources? Perhaps we will become creators of open access content and we will become curators of our own databases, rather than consumers of for-profit databases.

**Creating Digital Content**

Librarians are already becoming curators of digital content. We see it in the digitization of traditional library publications, such as indexes, bibliographies,

and research guides.[6] As we create these resources and make them available for worldwide consumption, we are playing a greater role than we were when these works were distributed locally in small quantities.

With this broader distribution comes greater scrutiny. We cannot rely on obscurity to cover up for our potentially illegal practices. In some cases, we must license content from the creators to make it available on terms that will permit the project to move forward. To license such content or evaluate whether or not it is fair dealing/fair use, we need greater knowledge than we needed in the past when most violations would never be discovered. At the same time, we cannot live in fear of these laws and let them stifle legitimate academic practices. To find the right balance, we must educate ourselves about the relevant laws and publisher expectations. By becoming institutional experts, we will become a resource for the law school and universities within which we exist. This will in turn increase our status and concretely demonstrate how libraries and library staff contribute to the greater institution.

In turn, we can use our legal knowledge to implement plans that will lead to the creation of important digital archives. Scholars everywhere will use these archives, thereby strengthening the brand of the law library, law school, and university. This will further reinforce the importance of the library to the greater institution, potentially leading to improved staffing and funding.

**Preservation**

Libraries exist largely to preserve the knowledge of those who came before the current generation. As such, a major part of our role is to preserve content from the past and make it accessible to those in the present and the future. The print-to-digital transition is a challenge we are all facing. How do we preserve the print, in case it is needed, while migrating as much content as possible to the digital environment where it will be accessible to far more people than when the same work was in print? This is the greatest fear of publishers, but does not necessarily create an adversarial relationship between publishers and libraries for several reasons.

First of all, libraries are already working to preserve content that currently exists in the public domain, such as books that are out of copyright and uncopyrightable government documents. In addition, some libraries have licensed the right to preserve certain content that does not have great economic value to the publisher. These efforts are in addition to projects like HathiTrust,[7] which attempt to preserve protected content in case the original creators or licensees disappear.

Even as acidic paper is self-destructing on the shelves, we also face the challenge of preserving cassette tapes, VCR tapes, CD-ROMs, and other obsolete formats. Preserving these formats is difficult because we need machines to play the old formats as well as computers to encode the new ones. In addition, we need to preserve the original quality to the best of our abilities, even as the

particles are falling off the tapes we are trying to preserve. In terms of copyright, it is especially difficult to get permission to migrate data and make it more available when the creators are impossible to find or the work is still of great commercial value.

We have all had the experience of going to a website one week and finding it gone the next week. The preservation of content on the web is a huge challenge, given both the quantity of information and copyright law. For now, many are very selective in how they preserve web content in digital archives. Looking forward, we will have even greater challenges when the traditional computer file formats of HTML, Microsoft Word, and Adobe PDF are no longer industry standards.

**Institutional Repositories**

So far, we have discussed the importance of copyright knowledge to libraries and their greater institutions, as a way to offer unique content globally. One step beyond that is the creation of institutional repositories that showcase the work of our faculty members, staff, and students. This is a special type of digital archive that makes content created by the law school more easily accessible for those outside the law school by posting the full text of articles and book chapters on the Internet. Institutional repositories improve the image of the school as well as contributing to the greater legal information ecosystem. Institutional repositories are in addition to including the content in SSRN, be press, and other collections of related content, rather than instead of them. The theory is that the more accessible a work is, the more widely it will be read and cited.

The creation of institutional repositories is just the first step in the creation of this new ecosystem. Following the creation of these repositories, we will need to create tools to facilitate searching multiple repositories as well as perhaps creating metadata to provide subject access to related articles across schools. These interlinkages are already being done for case law and can be done either through cataloging practices or with technology that can search and automatically link articles that cite the same cases or have unusual keywords in common.[8]

The creation of an institutional repository takes some technical skill and significant hard work. Much of the hard work lies in ensuring that you have the right to post all the articles you want to. This process involves multiple steps, including determining whether inclusion of the article in the repository is fair dealing/fair use, figuring out who can legally permit you to reprint the article or book chapter, and explaining to the publisher why an institutional repository will not hurt sales of the journal. After these steps, the scanning, tagging, and uploading of the content is neither difficult nor time consuming.

Unlike a digital archive of historical content, an institutional repository should continually grow as your faculty, staff, and students publish more

content. Due to this growth, keeping the repository up-to-date is a significant commitment, which must be staffed on an ongoing basis. An additional challenge for institutional repositories is ensuring that everyone in the community informs you when something has been published and ideally gives you a copy. Finally, although institutional repositories are largely textual, some may include audio and video content, such as television and radio interviews, which need to be planned for and licensed in advance.

**Consortia and Collaboration**

It can be overwhelming to contemplate the changes law libraries will face in the near future. How can we preserve all legal knowledge in all formats for all time? What happens if we fail or make the wrong choices? What will libraries even look like in 10, 20, or 50 years?

We cannot know the answers to these questions. At the same time, we cannot let these questions paralyze us. We must move forward, and one way to do that is to collaborate more with our peer institutions. Right now, we are all getting our feet wet with these projects. We are experimenting on a small scale and waiting for the technologies to settle down. Unfortunately, I don't think technologies will settle down. What we can do is talk to our peer librarians at other schools and start to plan how multiple schools can break up these immense tasks into manageable projects.

For example, in a consortium of law libraries, one library could be in charge of licensing content, another could do the scanning, and a third could do the tagging and uploading. Yes, they would all need to agree on the scope of the project and the timeline, but it would mean that not every library would need to experiment with all aspects of each digital project.

Currently, there are consortia for licensing databases, coordinating print collection development, and resource sharing. In the future, similar consortia could work on digital archive creation and maintenance. One the greatest challenges to this vision is that the future is uncertain, and the project as a whole is only as strong as its weakest link. If one of the libraries loses half its staff to budget cuts, this loss will affect all libraries in the consortium. How can we all rely on each other in these times of uncertainty? In short, we cannot. We must take a leap of faith and begin with a project that is not too large or ambitious. If the project is achievable in a brief two or three year timespan, the risk of an institution dropping out is lower.

Librarians are better than almost any other profession at sharing and coordinating because that is the reason libraries exist as institutions. Now is the time for us to gain the copyright and licensing knowledge needed and to collaborate on the creation of this next wave of content.

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# IPR & COPYRIGHTS: LEGAL PROTECTION OF DIGITAL CONTENT WITH SPECIAL REFERENCE TO ELECTRONIC DATABASES

**Priya Rai***

**Abstract**

*The computer-based databases have made significant value addition in information products and services, and have enabled fast access to information. The growing role of databases for information access has brought to the fore questions of legal rights of the owners and users of the databases. Process of creating databases involve considerable cost and is undertaken for generating revenue, but on the other it has proved extremely useful to research and educational purposes. Increasing production of digital born databases raises legal issues relating to Copyright and intellectual property in cyberspace environment as there is no globally accepted International copyright laws that would take precedence over local laws. The article provides an overview about the legal protection of databases at national and international level. It concludes that librarians should tell their concern about its costing as well as go for national law network for academic law universities.*

## 1. Introduction

Modern society has become knowledge based society. With the advent of internet and new communication technologies the scientific and academic research approach for access of information has changed. Now most of the information is organized in the form of electronic databases. An electronic database is not only a repository of interdisciplinary knowledge, but they act as information tools that provide easy fast and accurate retrieval services. This trend of electronic database industry has raised new challenges and issues relating to all aspects of intellectual property rights and legal protection of electronic databases. Traditionally, e-databases have been protected by copyright depending on the municipal laws of states. The process of developing of databases requires considerable investment in terms of capital and human labour including gathering of information, gateway, services, vendors etc.

The need for protection of database at international level was appreciated and recognized by Berne Convention in 1886 which emphasized on minimal level of copyright protection for the member nations and adoption of "national treatment Policy".[1]

There are no specific guidelines for protection and use of database. In Common Law countries, copyright law which protects labour is known as 'sweat of brow' whereas in Civil Law countries copyright protects creativity. In the

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landmark decision of the Supreme Court of United States "*Feist Publication v Rural Telephone Services Co*" The Supreme Court stated that: The primary objective of copyright is not to reward the labor of authors, but "to promote the Progress of Science and useful Arts". The judgment of court of appeal revised with the view that the "white pages" of a telephone directory were not protected by copyright, that the criterion of originality was a modicum of creativity and not mere labour.[2]

**2. Explanations of Electronic Database**

Databases are organized collection of electronically arranged compilations of information in a systematic manner for easy and fast access of information. European Union Database Directives defines a database as follows:

> *"A collection of independent works, data or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means"*.

*The above definition implies that database is a collection of pre existing materials, the materials incorporated into the database are independent in nature, which have to be arranged in systematic or methodical way, and it should be accessible individually by electronic or other means.*

According to U.S. Copyright Act, a database is a "compilation". A compilation in turn is a work framed by the collection and assembling of preexisting materials or the data that are selected, coordinated or arranged in such a way that the resulting work as a whole constitutes an original work of authorship. The term "compilation" includes collective works.

In India there is no specific meaning to the term database. According to S.2 (o) of Copyright Act 1957 mentions "Literary work includes computer programs, tables and compilation including computer databases".[3]

**3. European Union and Database Protection Law**

The European Community proposed a draft directive in 1992 for securing the investment of database industry and subsequently Database directive was adopted in 1996.[4] The primary objective of the directive is to provide copyright protection for the intellectual creation involved in the selection and arrangement of materials and creation of Sui Generis right. The laws of EU and US differ in their protection to databases. As a result the situation for the protection of Databases at international level is not harmonized. The EC has Database Directive for the protection of Databases whereas the rest of the world relies either on "Sweat of brow" copyright or on unfair competition, contract and Technology Protection Measures.

### *3.1 Copyright Protection*

The protection of databases is mainly divided into two major categories. One focuses on the protection provided by copyright, and second on Sui Generis rights. The EU Directive 96/9/EC deals with databases constituting the, authors own intellectual creation by reason of the selection or arrangement of their contents is to be provided through copyright protection. Thus essentially the sole criterion for protection is "originality". In other words, the lawful user of database is able to re-use all the data available in database, and could rewrite content of database or interpret in their own view by acknowledging the source of original data.[5]

### *3.2 Sui Generis Protection*

It prohibits the extraction or re-utilization of nay database in which there has been a substantial investment in obtaining, verifying or preventing the data contents. Thus there is no requirement for creativity or originality. The right protection last fifteen years from the date the non-creative database was made. For reducing the problem of database protection, the European Union has created specific rights for databases protection to provide copyright like protection to supplement traditional copyright laws termed "Sui Generis Rights". The Sui Generis provision is defined in Article 7 of the Database Directive.[6] The Sui Generis right enables the makers of a database' to prevent extraction and re-utilization of the whole or of a substantial part' of the database contents, evaluated qualitatively and/or quantitatively.[7] The extraction means permanent or temporary transfer of all or a substantial part of the contents of the database to another medium by any means or in any form. Re-utilization mean any form of making available to the public all or a substantial part of the contents of a database by the distribution of copies, by renting or online or other forms of transmission. In a landmark ruling, the European Court of Justice (ECJ)[8] clarified the function of the Sui Generis right of database protection. The European Court of Justice says:

> "*the maker of a database can reserve exclusive access to his database to himself or reserve access to specific people. However, if he himself makes the contents of his database or a part of it accessible to the public, his Sui Generis right does not allow him to prevent third parties from consulting that base*."[9]

*The fact that a database can be consulted by third parties through someone who has authorization for re-utilization from the maker of the database does not, however, prevent the maker from recovering the costs of his investment. It is legitimate for the maker to charge a fee for the re-utilization of the whole or a part of his database which reflects*, inter alia, *the prospect of subsequent consultation and thus guarantees him a sufficient return on his investment.*

*On the other, a lawful user of a database, in other words, a user whose access to the contents of a database for the purpose of consultation results from the direct or indirect consent of the maker of the database, may be prevented by the maker, under the Sui Generis*

*right provided for by Article 7(1) of the directive, from then carrying out acts of extraction and/or re-utilization of the whole or a substantial part of the database. The consent of the maker of the database to consultation does not entail exhaustion of the Sui Generis right.*

According to the Sui Generis, the copyright protects the database for 15 years.[10] The protection starts from 1 January of the year following the date when the database was completed or made available. Further the term is renewed for fifteen years if any 'substantial change' is made to the database or the content of the database which constitute a substantial new investment, evaluated qualitatively or quantitatively.[11] The Sui Generis right is enjoyed only by the makers of databases who are citizens or habitual residents of European Community[12] and companies and firms which are formed according to the law of a Member State and have their registered office, central administration or principal place of business within the community.[13]

**4. United States Laws for Protection of Electronic Databases**

United States is the pioneer in enacting database protection laws. In INS v. Associated Press, 1918, protection of databases was restricted to the misappropriation doctrine as supported under Feist Case. A number of bills were introduced in the House of Representatives on balance of protection against access unfair misappropriation or for compulsory licensing to a database right. Besides constitutional provisions supporting free flow of information was the greatest barrier for such legislations. Databases Investment and Intellectual Property Piracy Act, 1996 (H.R. 3531) came in the House of Representatives as introduced by Howard Coble, but was not approved. The following two bills were introduced in 1990s in support of legal protection of commercial databases:

- Collection of Information Anti Piracy Act, 1998. (H.R. 2652).
- Investor Access to Information Act, 1999. (H.R. 1858).

Collection of Information Anti Piracy Act, 1998 allowed a person to collect, organize or maintain a collection of information to prevent extraction or use of a qualitative or quantitative substantial part of that collection sufficient to harm the actual or potential market for products or services incorporating the collection. The bill was rejected due to opposition by various interests like scientists, universities, libraries and internet companies.

Further the above second bill, Investor Access to Information Act, 1999 was introduced to cope with unfair competition model to prevent only competitors from copying of the contents of a database without adding values for sale in competition with first database.

**5. International Law Instruments on Legal Protection of Databases**

*A number of international treaties in the direction of protection of intellectual content were taken in various parts of the world. Some of measures are Berne Convention, WIPO Treaty, TRIPS and Paris Convention.*

***5.1 Berne Convention***

The Berne Convention for the Protection of Literary and Artistic Works is the most important and oldest treaty relating to copyright protection given to original literary and artistic works. The Convention obligates member countries to establish minimum level of standards for copyright protection to follow and adoption of "national treatment policy" under which a member state must give the same protection to material copyrighted in other member states as it gives to material copyrighted under its own law. The Berne Convention was held in Paris in 1896 and revised in Berlin in 1908, completed in Berne in 1914, revised at Rome in 1928, in Brussels at 1948, in Stockholm at 1967 and in Paris at 1971, and was amended in 1979. The UK signed the treaty in 1887, but did not implement large parts of it until 100 years later with the passage of the Copyright, Designs and Patents Act of 1988. Article 2(1) of Berne Convention explains an illustrative list of the types of works protected under the Convention. The expression "literary and artistic works" is defined as "every production in the literary, scientific and artistic domain, irrespective of the mode or form of the production's expression." Art. 2(2) of Berne Convention provide that the member countries have to prescribe the work into categories. Articles 2bis allows Berne members to exclude certain categories of works from protection, such as legislative and administrative works, applied art, industrial models, political speeches, lectures, and public addresses. Article 2(5) of the Berne Convention states that "collections of literary or artistic works such as encyclopedias and anthologies which, by reason of the selection and arrangement of their contents, constitute intellectual creations" are protected "as such." Thus Article imposes on Member States an obligation to protect collections of subject matter other than copyright works. However, the Convention imposes minimum obligations on States, and the application of the above rule would thus seem inapplicable, as it would result in the imposition of ceilings, as well as a normative floor.[14]

***5.2 World Intellectual Property Organization Treaty (WIPO)***

The European Union in February 1996 submitted a proposal to WIPO in Geneva to establish a new non-copyright form of protection for databases based on *Sui Generis* rights legal. In May 1996 the United States submitted its own treaty proposal for consideration on database protection. WIPO in its diplomatic conference in December 1996 considered the draft of three proposed treaty for harmonizing legal framework of database protection two treaties were approved, but one treaty, on database protection was tabled.[15] The draft treaty combined the elements of both the European and the U.S. proposals based on firstly subject matter of protection, nature and duration of right.[16] The Preamble to the draft treaty consists of the following[17]:

> *"..to establish a new form of protection for databases by granting rights adequate to enable the makers of databases to recover the investment they have made in their databases and by providing international protection in a manner as effective and uniform as possible."*

The proposed treaty obligate, contracting the parties to protect databases which constitute " a substantial investment in the collection, assembly, verification, organization or presentation of the content of databases".[18]

Furthermore, the WIPO draft treaty defines some concepts relating to Databases. "The Database is defined as "a collection of independent works, data or other materials arranged in a systematic or methodical way and capable of being individually accessed by electronic or other means."[19] The maker of the databases means "the natural or legal person or persons with control and responsibility for the undertaking of a substantial investment in making a database". The draft treaty also confers a database maker the right to "authorize or prohibit the extraction or utilization of its contents" The extraction is defined as "the permanent or temporary transfer of all or a substantial part of the content of a database to another medium by any means or in any form." Utilization "means the making available to the public all or a substantial part of the contents of a database by any means". A "substantial part" means any portion of the database, including an accumulation of small portions that is of qualitative significance to the value of the database". The term of protection would have been either 15 or 25 years. The draft Treaty tabled before the WIPO Diplomatic Conference held at Geneva in December 1996 dropped out and never matured as the treaty proposal were controversial and subject to strongly criticism by almost all countries of the world especially USA.

### *5.3 Trade Related Aspects of Intellectual Property Rights Agreement (TRIPS)*

On January 1, 1995 the TRIPS Agreement (WTO 1995) was adopted establishing the World Trade Organization. The provisions of the TRIPS Agreement cover almost all forms of IPRs. Article 10(2) of the TRIPS Agreement states:

> *"Databases and other compilations of data or other material shall be protected as such under copyright even where the databases include data that as such are not protected under copyright. Databases are eligible for copyright protection provided that they by reason of the selection or arrangement of their contents constitute intellectual creations. The provision also confirms that databases have to be protected regardless of which form they are in, whether machine readable or other form. Furthermore, the provision clarifies that such protection shall not extend to the data or material itself, and that it shall be without prejudice to any copyright subsisting in the data or material itself."*

TRIPS provision is broader in scope than Article 2(5) of the Berne Convention, which applies strictly to collections of literary and artistic works. In light of the dominant interpretation of the Berne Convention, which sees Article 2(5) as an explanation or clarification of the principle of protection established in Article 2(1), the criteria used in Article 10(2) of the TRIPS may be said to codify existing copyright protection. It is the compilation of data or other material, which is protected under TRIPS Agreement. It must be noted that compilation of

a subject matter of Copyright is protected under almost all the legal systems. Thus, if a data is compiled in a particular manner, the same cannot be used in a similar manner. Further, by using the words other materials the ambit of this Article has been extended to even non-data items. The compilation may be either in a machine-readable form or in some other form. The previous category includes storing of data in computers and its parallels, whereas the latter category includes storing of the data in the traditional paper mode. The storing of data property in computers and its parallels necessitates protection of the same in Information Technology law as well. This may be the reason that the Government is planning to amend the existing Information Technology Act, 2000.

## 6. Electronic Databases and Indian Law

Indian Parliament is competent to legislate on data protection since it can be interpreted 'as any other matter not enumerated in List II and List III.' Data protection is, thus, a Central subject and only the Central Government is competent to frame legislations on issues dealing with data protection.

*India being a large producer of intellectual content and a number of commercial databases is a member of almost all the international conventions like Berne Convention, Paris Convention, TRIPS and WIPO. Various measures were taken by Indian legislatures since British period to protect intellectual property like Patent Act 1970, Trade Marks Act 1940 (Amendment 1999), Industrial Design Act 2000, Indian Copyright Act 1957 and Information Technology Act, 2000.*

### *6.1 Indian Copyright Act*

Today, the law of copyright facilitates the legal framework not only for the protection of traditional beneficiaries of copyright like authors, composers, artists and for creation of works by the cultural industries, publishing houses but also for the databases and software's creators.[20] The Indian Copyright Act 1957 amended in 1994 protects databases such as 'Literary Work' though the literary work is not defined in the copyright act. However it includes tables, compilations, computer programmes including computer databases, which can be expressed in a language and written down.[21] Under copyright act the owner of the computer programme enjoys many exclusive rights to reproduce the work in any material form and to make any translation of the work.[22] The unauthorized use of material covered under copyright laws are subject to infringement of copyright law violations but there are certain exceptions to it, for example the 'fair dealing'[23] doctrine for the purpose of free flow of information in the society the small part of information if used for teaching and educational purpose are exempted against the action for infringement.

### *6.2 Protection of Databases under Information Technology Act, 2000*

The Information Technology Act, 2000 prescribes punishment for 'cyber contraventions' under Section 43 (a) to (h)) and 'cyber offences' under Sections 65-74. The former would include gaining unauthorized access, and downloading or extracting data stored in computer systems or networks, and may result in civil prosecution. The latter category covers 'serious' offences like tampering with computer source code, hacking with intent to cause damage, and breach of confidentiality and privacy, all of which would invite criminal prosecution. Any person who has secured unauthorized access to a computer system or network, or has extracted any database, or tampered with it in any way, is liable to compensate a person suffering damage thereby for an amount that can extend to Rupees 10,000,000.[24] The IT Act penalizes hacking,[25] as also the act of tampering with the computer's source code[26] by providing for imprisonment up to three years or fine up to Rupees 200,000 or both. Further, if a person having powers under the IT Act, breaches confidentiality and privacy by disclosing the data to another, he is punishable with two years imprisonment or fine up to INR 100,000 or both.[27] In all such cases of offences or contraventions, the 'network service provider' or the 'intermediary', can also be made liable for any third party information or data made available by him if it was done with his knowledge or if he did not exercise due diligence to prevent the offence.[28] 'Intermediary' is defined to mean anyone who receives stores or transmits a particular electronic message on behalf of another person, or who provides any service with respect to that message.[29] The IT Act covers offences and contraventions committed abroad as well, irrespective of the nationality of the person, as long as the computer system or network is located in India.[30]

*Himalaya Drug Company v. Sumit*[31] is the first case, in India, relating to copying of databases. The matter appeared before the Delhi High Court when the plaintiff's online herbal database was copied by the defendant, an Italian infringer onto its website. The Court issued an injunction against the infringer and in compliance with the interim order; the American service provider removed the infringing content on its own accord and furnished the complete details of the infringer, who had rented space on the website.

The Indian courts have therefore protected compilations involving minimal originality as has been held, in the case of *V.Govindan v. E.M.Gopalakrishna and Anr.*,[32] that "no man is entitled to steal or appropriate for himself the result of another's brain, skill or labor even in such works." In the case of *Burlington Home Shopping v. Rajnish Chibber*,[33] it was held that a compilation of addresses developed by anyone by devoting time, money, labour and skill though the source may be commonly situated amounts to a 'literary work' wherein the author has a copyright.

In the recent decision of the case *Eastern Book Company v. Navin J. Desai*,[34] question was raised regarding copyright issue in case of judgments of courts. The Delhi High court explained "It is not denied that under section 2(k) of the

Copyright Act, a work which is made or published under the direction or control of any Court, tribunal or other judicial authority in India is a Government work. Under section 52(q), the reproduction or publication of any judgment or order of a court, tribunal or other judicial authority shall not constitute infringement of copyright of the government in these works. It is thus clear that it is open to everybody to reproduce and publish the government work including the judgment/ order of a court. However, in case, a person by extensive reading, careful study and comparison and with the exercise of taste and judgment has made certain comments about judgment or has written a commentary thereon, may be such a comment and commentary is entitled to protection under the Copyright Act". The Delhi High Court has defined when the copyright work shall be deemed to be infringed. Section 51 of the Copyright Act provides "Under Section 51. When copyright infringed.-Copyright in a work shall be deemed to be infringed:

(a) when any person without a license granted by the owner of the copyright or the Registrar of Copyrights under this Act or in contravention of the conditions of a license so granted or of any condition imposed by a competent authority under this Act-

   i. does anything, the exclusive right to do which is by this Act conferred upon the owner of the copyright, or

   ii. permits for profit, any place to be used for the communication of the work to the public where such communication constitutes an infringement of the copyright in the work, unless he was not aware and had no reasonable ground for believing that such communication to the public would be an infringement of copyright; or

(b) when any person:

   i. makes for sale or hire, or sells or lets for hire, or by way of trade displays or offers for sale or hire, or

   ii. distributes either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright,...."

Legal protection of database is a critical issue involving various factors including copyright, commercial right and monopolies and restrictive practices. Along with other areas of law, law related to protection of database is growing at a faster rate beyond interpretation of rule of law by courts at international as well as state level. Law of protection of database is also beyond the jurisdiction of a nation as its applicability in all over the world. Copyright laws in the world limit the protection of databases which may lack originality of their contents. Much efforts have been done towards protection of databases at various levels. Berne Convention principles are laid down to protect any production of literary work. World Intellectual Property Organization treaty is also introduced for legal

coverage of databases. World Trade Organization framed TRIPS agreement in direction of protection of legal status of online databases. Besides in Europe, Sui Generis database protection issue came into existence to cope legality of databases. Two legislations, Collection of Information Anti Piracy Act, 1998 (H.R. 2652) and Investor Access to Information Act, 1999 (H.R. 1858) were introduced to protect digital information copyright and piracy. The Patent & Trademarks Office Database Conference was held on April 28, 1998 at the Brookings Institution in Washington and its proceedings were published as Patent and Trademark Office Report Recommendations as output of Database Protection and Access Issues. In India various efforts have been made in protection of digital information. Indian Copyright Act, 1957 was amended in 1994 to include protection of digital literary work in copyright law sphere. Information Technology Act 2000 was also introduced to facilitate protection of it enabled databases and other online networked architectures.

**7. Conclusion**

With the increase of digitization and preservation of data, the road is under built to protect the rights of content producers. The flow of digital information is very fast and be reached across the boundaries within a moment. Being a democratic in nature, electronic databases need international laws required to be bound by all states and all commercial as well as government database holders to protect the literary work of persons. A universally applicable treaty harmonizing laws over all States must be formulized to control the usage of copyright protected digitally stored data to prevent literary rights of original creators. The binding force must also be assigned to commensurate with local authorities for strictly applicability of such universal laws over all database maintenance agencies and the states where these databases are used.

However, to cope with the changing trends of managing information, librarians must resort the issue with active participation and safeguarding the interests of scholarly community along with the financial constraints of the library.

**Endnotes**

1. The Berne Convention for the Protection of Literary and Artistic Works, usually known as the Berne Convention, is an international agreement governing copyright, which was first accepted in Berne, Switzerland in 1886.
2. *Feist Publications, Inc., v. Rural Telephone Service Co.*, 499 U.S. 340 (1991)[1], commonly called just *Feist v. Rural*, was a United States Supreme Court case in which Feist had copied information from Rural's telephone listings to include in its own, after Rural had refused to license the information. Rural had sued for copyright infringement. The Court ruled that information contained in Rural's phone directory was not copyrightable, and that therefore no infringement existed.

3. Indian Copyright Act, 1957.
4. The Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases is a European Union directive in the field of copyright law, made under the internal market provisions of the Treaty of Rome. It harmonizes the treatment of databases under copyright law, and creates a new sui generis right for the creators of databases which do not qualify for copyright.
5. See Council Directive 96/9 of 11 March 1996 On the Legal Protection of Databases 1996 Official Journal (L 77) 20 (hereinafter the 'Database Directive')
   http://www.columbia.edu/~mr2651/ecommerce3/2nd/statutes/DatabaseDirective.pdf.
6. See Article 7 See Council Directive 96/9 of 11 March 1996 On the Legal Protection of Databases 1996 Official Journal (L 77) 20 (hereinafter the 'Database Directive')

   http://www.columbia.edu/~mr2651/ecommerce3/2nd/statutes/DatabaseDirective.pdf.
7. See Article 7(1) & 5 of Council Directive 96/9 of 11 March 1996 On the Legal Protection of Databases 1996 Official Journal (L 77) 20 (hereinafter the 'Database Directive')

   http://www.columbia.edu/~mr2651/ecommerce3/2nd/statutes/DatabaseDirective.pdf.
8. Judgment of the Court (Grand Chamber) of 9 November 2004. The British Horseracing [2004] ECRI-10415.
9. British Horseracing Board v. William Hill Organization, Case C-203/02 European Court of Justice, 9th Nov. 2004.
10. Article 10(1) of The EU Database Directive: 96/9/EC states that the right provided for in Article 7 shall run from the date of completion of the making of the database. It shall expire fifteen years from the first of January of the year following the date of completion.
11. Article 10(3) of The EU Database Directive: 96/9/EC states that Any substantial change, evaluated qualitatively or quantitatively, to the contents of a database, including any substantial change resulting from the accumulation of successive additions, deletions or alterations, which would result in the database being considered to be a substantial new investment, evaluated qualitatively or quantitatively, shall qualify the database resulting from that investment for its own term of protection.
12. Article 11.1 of The EU Database Directive: 96/9/EC says The right provided for in Article 7 shall apply to database whose makers or right holders are nationals of a Member State or who have their habitual residence in the territory of the Community.

13. Article 11.2 of The EU Database Directive: 96/9/EC says that Paragraph 1 shall also apply to companies and firms formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Community; however, where such a company or firm has only its registered office in the territory of the Community, its operations must be genuinely linked on an ongoing basis with the economy of a Member State.
14. Berne Convention for the Protection of Literacy and Artistic Works held on September 9, 1886 as compiled at Paris on May 4, 1896 revised at BERLIN on November 13, 1908, completed at BERNE on March 20, 1914, revised at ROME on June 2, 1928, at BRUSSELS on June 26, 1948, at STOCKHOLM on July 14, 1967, and at PARIS on July 24, 1971, and amended on September 28, 1979
http://www.wipo.int/treaties/en/ip/berne/trtdocs_wo001.html.
15. On December 20, 1996, the World Intellectual Property Organization (WIPO) Diplomatic Conference on Certain Copyright and Neighbouring Rights Questions (the "WIPO Conference") adopted two Treaties, namely the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. These Treaties amend the 110 year-old Berne Convention for the Protection of Literary and Artistic Works and represent the first significant step toward updating the international protection for intellectual property required to facilitate our entry into the digital world of the 21st century.
16. U.S. Copyright Office Report on Legal Protection for Databases, August, 1997 has issued a comprehensive report to Congress on the subject of legal protection for databases.
17. See WIPO, Basic Proposal for the Substantive Provisions of the Treaty on Intellectual Property in respect Databases to be considered by the Diplomatic Conference, Geneva, 2-20 December 1996. WIPO Document CRNR/DC/6.)
18. Article 1(Draft Treaty on Intellectual Property in Respect of Databases, WIPO CRNR/DC/4,(Aug. 30, 1996) ("WIPO Draft Treaty") says that This Treaty is a special agreement within the meaning of Article 20 of the Berne Convention for the Protection of Literary and Artistic Works, as regards Contracting Parties that are countries of the Union established by that Convention.
19. WIPO: Basic proposal for the substantive provisions of the treaty on certain questions concerning the protection of literary and artistic works considered by the diplomatic conference
http://www.wipo.int/edocs/mdocs/diplconf/en/crnr_dc/
crnr_dc_4.pdf.

20. Section 13(1)(a) of Indian Copyright Act, 1957 relates to Works in which copyright subsists.- (1) Subject to the provisions of this section and the other provisions of this Act, copyright shall subsist throughout India in the following classes of works, that is to say,- (a) original literary, dramatic, musical and artistic works.
21. Clause (i) & (X). of Indian Copyright Act.
22. Under Indian Copyright Act the term "Fair Dealing" used to describe the permitted acts.
23. Sec.52(1)(a) & (b) of Indian Copyright Act, 1957 relates to Certain acts not to be infringement of copyright. (a) a fair dealing with a literary, dramatic, musical or artistic work (b) a fair dealing with a literary, dramatic, musical or artistic work for the purpose of reporting current events.
24. Section 43 of Information Technology Act, 2000 relates to Penalty for damage to computer, computer system, etc. If any person without permission of the owner or any other person who is incharge of a computer, computer system or computer network, — (a) accesses or secures access to such computer, computer system or computer network; (b) downloads, copies or extracts any data, computer data base or information from such computer, computer system or computer network including information or data held or stored in any removable storage medium; (c) introduces or causes to be introduced any computer contaminant or computer virus into any computer, computer system or computer network; (d) damages or causes to be damaged any computer, computer system or computer network, data, computer data base or any other programmes residing in such computer, computer system or computer network; (e) disrupts or causes disruption of any computer, computer system or computer network; (f) denies or causes the denial of access to any person authorized to access any computer, computer system or computer network by any means; (g) provides any assistance to any person to facilitate access to a computer, computer system or computer network in contravention of the provisions of this Act, rules or regulations made there under; (h) charges the services availed of by a person to the account of another person by tampering with or manipulating any computer, computer system, or computer network, he shall be liable to pay damages by way of compensation not exceeding one crore rupees to the person so affected.
25. Section 66 of Information Technology Act, 2000 relates to Hacking with computer system. (1) Whoever with the intent to cause or knowing that he is likely to cause wrongful loss or damage to the public or any person destroys or deletes or alters any information residing in a computer resource or diminishes its value or utility or affects it

injuriously by any means, commits hack: (2) Whoever commits hacking shall be punished with imprisonment up to three years, or with fine which may extend upto two lakh rupees, or with both.

26. Section 65 of Information Technology Act, 2000 relates to Tampering with computer source documents. Whoever knowingly or intentionally conceals, destroys or alters or intentionally or knowingly causes another to conceal, destroy or alter any computer source code used for a computer, computer programme, computer system or computer network, when the computer source code is required to be kept or maintained by law for the time being in force, shall be punishable with imprisonment up to three years, or with fine which may extend up to two lakh rupees, or with both. Explanation.—For the purposes of this section, "computer source code" means the listing of programmes, computer commands, design and layout and programme analysis of computer resource in any form.

27. Section 72 of Information Technology Act, 2000 says Penalty for breach of confidentiality and privacy. Save as otherwise provided in this Act or any other law for the time being in force, any person who, in pursuance of any of the powers conferred under this Act, rules or regulations made there under, has secured access to any electronic record, book, register, correspondence, information, document or other material without the consent of the person concerned discloses such electronic record, book. register, correspondence, information, document or other material to any other person shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both.

28. Section 79 of Information Technology Act, 2000 says Network service providers not to be liable in certain cases. For the removal of doubts, it is hereby declared that no person providing any service as a network service provider shall be liable under this Act, rules or regulations made there under for any third party information or data made available by him if he proves that the offence or contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence or contravention. Explanation.—For the purposes of this section, — (a) "network service provider" means an intermediary; (b) "third party information" means any information dealt with by a network service provider in his capacity as an intermediary.

29. Section 2(1)(w) of Information Technology Act, 2000 says "intermediary" with respect to any particular electronic message means any person who on behalf of another person receives, stores or transmits that message or provides any service with respect to that message.

30. Section 75 of Information Technology Act, 2000 says Act to apply for offence or contravention committed outside India. (1) Subject to the provisions of sub-section (2), the provisions of this Act shall apply also to any offence or contravention committed outside India by any person irrespective of his nationality. (2) For the purposes of sub-section (1), this Act shall apply to an offence or contravention committed outside India by any person if the act or conduct constituting the offence or contravention involves a computer, computer system or computer network located in India.
31. *Himalaya Drug Co. v. Sumit*, 2006 (32) PTC 112 (Del).
32. *V. Govindan v. E.M. Gopalakrishna and Anr.*, AIR 1955 Madras 391.
33. *Burlington Home Shopping v. Rajnish Chibber*, 1995 PTC (15) 278.
34. *Eastern Book Company v. Navin J. Desa*, (2002) 25 PTC 641 (Del) (DB).

# TITLE: IS ROYALTY ARISING OUT OF COPYRIGHTED SOFTWARE TAXABLE?

**Shayan Ghosh**
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**Abstract**

This paper explores the relationship between **Intellectual Property** and Indian Tax regime, which lays emphasis by mapping intellectual property with various forms of taxation. Our paper while addressing intellectual property taxation will cover both general and special tax principles prevalent in India. Intellectual property is a common concept in changing the way in which business are conducted in this knowledge era. In this epoch of **globalization**, all nations have combined together into a single nation through treaties, double taxation agreements with certain countries and the Information Technology sectors are the trend setters today. **Copyrighted software** denotes a right over a property contained in copyright in software, in the terminology that it is a copy of computer software from which the work can be perceived and reproduced, or otherwise communicated. The main issue of our paper is on the business transactions between foreign software companies and Indian software markets including the emerging conflict of royalty which comes under the ambit of taxation. The practices prevailing in the software industry is that the company acquires the copyright of the software thenceforth grants an End User License Agreement for mere usage of that product and to create **backup copies** for non-commercial purposes. The copyright owner then receives a lump – sum amount of royalty through the overseas permanent establishment. A copyright is perpetual right to reproduce for commercial usage which subsists in the owner of the software. Let us now consider the taxing aspect which is creating a mass confusion on the question that whether to pay royalty on an Intellectual property software. The Double Taxation Avoidance Agreement (DTAA) provides for a particular mode of computation of **royalty** irrespective of the domestic income-tax statutes. The point of conflict arises with the royalties only when there is a business connection between a non-resident assessee company and a resident (overseas territory) where the notion of **'permanent establishment'** of the company is of great importance. The central conception of our study is that if payments of lump-sum consideration accrues or arise in India through the selling of copyrighted software, does amounts to royalty which may be taxable under circumstances of different nature.

**Keywords:** Intellectual Property, globalization, copyrighted software, backup copies, royalty, permanent establishment.

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**Introduction**

In the emergence of global economy and technology, business transaction has become advanced and taxpayers in the world, taxation laws has been unified with various nations due to foreign venture in any international business transaction. Due to the globalization of economies, Intellectual property has got a major attention in technologically advanced contemporary world and is becoming one of the greatest in commercial circles. Taxation of goods along with distinguishing classes has been the custom over a long period of time. Deliberately taxing of intellectual property has been included in taxation legislations of economy of various international states for certain objectives. In India, intellectual property is taxed indirectly. India is entering into trade agreements with various countries which are promoting the inflow and outflow of technology, capital, skills and technological knowhow in faster scientific and technological advancement. Particularly the creation, ownership, purchase, license or sale of a copyright may exert significant tax implications. It would take an entire treaty to fully discuss the relevant tax issues that copyright holder may confront. There has been prevailing a huge aspect of difficulty regarding the tax complexities in India. The key challenge in this aspect is about the incidence of taxation and the assessment of the I.P. instruments. Royalties is regarded as the consideration received by the service provider from its customer and the government levies different tax rates in these transactions. Royalties are payments of any kind, received as consideration for the use of, or right to use, any copyright of literary, artistic or scientific work including cinematographic films, or films or tapes used for radio or television broadcast or right to use, industrial commercial or scientific equipment for information concerning industrial, commercial and scientific experience. As per Section 14 of the Indian Copyrights Act 1957, a Copyright is an exclusive right in relation to a literary, dramatic, musical, artistic work along with computer software programmes. Thus, this paper is aimed to investigate the holistic view the balancing interests in the technological society, to intensify trade for the advancement of intellectual property from the weapon of taxation.

**Background Of The Study**

Intellectual Property has been the key component under international taxation due to cross-border movement of various multinational companies offering intellectual property rights, widening the scope for taxation of these rights. India has opened up its economy in 1991 which enhanced the spheres of taxation of customs, central excise duties and service tax. Indian scheme of taxation has a three tier structure where the income tax is collected by the Central Government under the heads of salaries, income from house property, capital gains, profits and gains of business or other profession and income from other sources along with customs duties, central excise, sales tax and service tax. The taxes levied by the State governments are sales tax, stamp duty, state excise, land revenue, duty on entertainment and tax on professions and callings. The local

bodies are empowered to levy tax on properties, buildings, octroi, tax on markets, user charges for utilities like water supply, drainage, etc. A software company may license its software for usage, the consideration from selling the certain right to use is known as the Royalty. Payments under Intellectual property remarkably the copyright includes the acquisition of partial rights, representing royalty where the consideration is for granting the right to use the program in a manner that would, without such license, constitutes an infringement of copyright. Computer software means a computer programme recorded on any disc, tape, perforated media or other information storage device. It is a programme which contains instructions to the computer. The source code and the object code are protected by the Copyright Act, under literary works. Royalty is a consideration including a lump-sum consideration, for transfer of all or any right in respect of a Copyright, Patent, Trademark, design and model or secret formula etc. is taxable.[1] Royalty also includes the right as a part of technology transfer or leasing machinery equipment or sale. In the case of TCS v. State of Andhra Pradesh, the Hon'ble Supreme Court held that the "software sold off the shelf" are to be considered as 'goods' and therefore can be taxed under the Andhra Pradesh General Sales Tax Act, which meant that intellectual properties are also levied for taxation. The incidence of taxation may also lead its entry in the field of intellectual property as the royalties earned does compute for themselves under the Income Tax Act in India.

**Double Taxation Treaties & Intellectual Property**

Territorial nexus for the purpose of determining the tax liability is an internationally accepted principle. India is a party to a comprehensive range of Double Tax Treaties, the majority of which deal expressly with royalties arising from one contracting state which are paid to resident from another contracting state. The majority of treaties give exclusive taxing rights to the contracting state where royalties arise through a permanent establishment or a fixed base. Where treaty relief is not available, the country of residence usually gives unilateral relief for the foreign tax. Section 90 of the Income Tax Act has authorized the Central Government to enter into DTAA treaties with other countries.[2] The provisions in DTAA which India has entered with other countries, in most of the cases where non-residents receive any income for any of their included services, they may not be subjected to tax in India. The profits of the Double Taxation Avoidance Agreements entered into by India with different countries, if the said non-residents or foreign company carries on business in India through a branch, sales office etc. or through any agent and habitually exercises an authority to conclude contracts then such income of the non-resident is attributed to taxation in India.[3]

**Royalties & Taxation**

Royalties comes into question when the party is a resident of the contracting State and has a permanent establishment or fixed base, then such royalties shall be deemed to arise in the state in which the permanent

establishment is situated. Source based taxation depends on the connection between a country and the generation of income.[4] Thus, a business may be carried on in the country or income may be accruing from investments located in that country. Generally income from 'royalty' and 'fees for technical services' are subject to withholding tax in the source country under the treaties.[5]

The advent of DTAA is to prevent and discourage any such taxation which may contribute to the free flow of international trade, international investment and international transfer of technology. The agreements solely have given the right of taxation in respect of the income of the nature of interest, dividend, royalty and fees for technical services to the country of residence. However, the source country has to be limited as per the rate of taxation prescribed in the agreement. The SC in the case of TCS v. State of Andhra Pradesh has observed that tax is to be paid, in the case of software for the purpose software and media cannot be split up, termed as sale of goods.

**Present Situation**

Computer software can be sold or may be licensed along with the end-user licence agreement. It is a settled position of law that the actual movement of goods is necessarily meant for the purposes of sale.[6] But this position may be true for tangible goods, the position of intangibles are therefore in question. The movement of goods through internet like software's are taxable is a technical matter. There is no mechanism in India to monitor the movement of IPRs for the purposes of taxing.

**Case Study: A Practical Approach**

Cases have been coming before the different judicial forums for issues regarding whether the considerations paid to the nonresident company was taxable as royalty or whether the business income will be exempted as there was no Permanent Establishment of the foreign supplier in India. In the *Samsung Electronics Ltd. case*,[7] the Bangalore Tribunal observed that payments for the copyrighted articles are to be taxable in India.

**"Proximity Of Taxation Of Intellectual Properties"**

The necessity for the assessment needs to have an established connection founded on the basis of residence of the person which would be sufficient to establish a territorial connection.[8] With the criteria of a business connection, the territory of the taxing state or the specific situs in it for making money or from other source of Income from the business activity due to which the taxable income is derived, thereby it is enough for the nexus based on situs that the source of income is derived from that state.[9] In case of composite payments certain 'income' is chargeable as tax. The legislative amendment of Explanation to Section 9 of the Income Tax Act, is substituted with retrospective effect makes it clear that whether or not the assessee has a Permanent Establishment here in India for the Royalty income.

**"Incidence Of Taxation From Intellectual Property"**

Several non-resident foreign companies are coming to India for trade, where they have licensed computer software's in lieu of a consideration amount from its end-users. Section 9 (1) of the Income Tax Act, 1961 states that income accrued in India should be taxed.[10] The case defining Business Connection has been decided by the Rangoon High Court which states that the expression of "business connection" must denote something, which produces profits or gains and not a mere state or condition which is favorable to the making of profit.

Further, the business connection has been explained in the Explanation 2 of the section 9 (1) (i) of the Income Tax Act, 1961, paving the way through the business connection which should include any business activity who is acting on behalf of the non-resident, comprising of a broker, general commission agent or any other agent having an independent status. In order to constitute a business connection, some continuity of relationship between the person in India making the profit and the person outside India who receives or realizes the profit, the business connection in this case is necessary. The Hon'ble Supreme Court of India held that 'business connection' postulates a real and intimate relation between trading activity carried on outside the taxable territories between the distributor customers.[11] Therefore, in Asia Satellite v. Director of Income Tax,[12] it was held that to bring the consideration in the ambit of royalty under the Section 9 (1) (vi), the appellant has to prove that there was a business connection in India with Indian company to contribute to the earning of the profit by the non-resident in his business.[13]

Tax consequence arises when a copyright is assigned or licensed. The consideration from the copyright is giving the right to use the property. For the qualification of 'business profit' the subject matter transferred must be considered to be a sale of property. Copyright subsists in computer program which is a literary as also a scientific work for which royalty is constituted. It apparently establishes that the product is protected by copyright and that the assessee company has the possession of the title, copyright and other intellectual property rights in the product. The expression 'the product is licensed not sold'. Consequently the consideration received by the non-resident company was from the license of the copyrighted software and hence it is taxable.

**"Copyright And Royalty"**

"Royalties" are payments or consideration for usage of any commodity. The expression "right" denotes "entitlement". The transaction in the copyright software is a sale or merely a license or royalties depends upon the right to use the software. Transfer of all rights means some consideration of conveys royalty. The copyright holder has to bear the risk of the product failure. A "copyright work" means literary, dramatic, musical, or artistic works in comply with the criterion of originality in order to be protected in which copyright subsists. A copyrighted article merely allows a use of information contained therein. The

incorporeal right to software is "copyright". Computer software's are considered under the Copyright Act.[14] Model Commentaries provide that in many countries, the copyright laws specifically classify software as a "literary or scientific work" and in the absence of the terms; software could be treated as "scientific work". The transfer of computer program which in return yields royalty made for acquisition of rights in the copyright of the software is taxable.

**Conclusion And Recommendations**

The tax policies should be promoted for the development of Intellectual Property and their creation with innovation for the promotion of trade. As such in the present situation, there are no such facilities that are available for Intellectual Property creation or technology transfer under the taxing statutes. The era of globalization have a huge impact in India, for which the Government of India, should legislate upon an enactment in the field of taxation for the growth and providing incentive to the I.P. industry and further to, add impetus to the nation's economic growth. Today, IPRs are indirectly taxed at many levels. The barriers to scientific progress should be removed for which the double taxation avoidance agreements must be implemented effectively. There is no reward for the industry in which innovation and inventions may lead for which investments are needed to get boosted up. The taxation statutes should make such regulations for which people might get encouraged from the policies by which technical innovation may be made possible. The capital value in India should be re-assessed by taking into account of the intangible properties of every company in India. A committee must be made up in order to check the relationships between Intellectual Properties and taxation in India for acting as a catalyst to innovation. It will lead to lower the transaction cost of I.P., benefitting the domestic companies and attractive policies for the foreign companies also. Creation of a flexible I.P. taxation regime should be developed in accordance with world taxation statutes. The taxation regime should not be a burden on the IP service sector in the country. Taxing the income of IPRs is gaining in number which needs to be stopped with codified laws.

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# LICENSING OF DIGITAL RESOURCES: A COMPARATIVE STUDY

**Amit***

The preservation of digital publications involves various technical, legal, economic and organization issues. Copyright law and licensing arrangements may prevent problems for libraries that wish to preserve digital resources in the long-term or even short term. The complex nature of digital publications and new publishing models present various problems including resource intensive rights clearance and reliance on publishers to continue to provide access and preserve digital publications. There is a need for research to clarify issues identified in the preservation and legal literature and to provide a clearer picture of the activities and perceptions of stakeholders in digital preservation, including authors, publishers and libraries.

**Introduction**

The preservation of digital publications is an increasingly high profile issue. Digital preservation is challenging on a number of levels including various technical, legal, economic and organizational issues. Copyright has always been an issue in the development of digital libraries; copyright legislation in many countries was not designed with the digital environment in mind. Acquiring, managing and providing access to digital information in libraries involves making copies, which is rarely the case with more traditional library material.

Libraries have supported multiple formats for decades. But the newest medium, digital transmission has presented a wider scope of challenges and caused library patrons to question the established and recognized multi format library. Within the many questions posed, two distinct ones echo repeatedly. The first doubts the need to sustain print in an increasingly digital world, and the second warns of the dangers of relying on a still-developing technology. With the advent of the Web and the proliferation of electronic information, law librarians are more frequently confronted with questions from their administrators and patrons on the present and future value of the printed book. Technology and its advantages—convenience, cost, and timeliness—present an appealing future. So why libraries would continue to stock their shelves with printed texts, and why should their parent institutions provide space or funding for such acquisitions?

The answer is surprisingly begins with the library's mission to meet current and future user needs. This rapidly changing technological environment contains inherent future risks for researchers and academic libraries. The creativeness that spawns advancement and development also slows or prevents the adoption of stable standards in format, laws, and pricing. An environment that blossomed

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under constant change does not react well to restriction, and tying research or development to a particular standard would result in stagnation. Without such standards, though, a library cannot guarantee the preservation of information for future generations, and may even be frustrated in its goal to provide continued access to the current generation.

The world of information gathering is in transition, and users have shown a marked preference and reliance on a technology, which, if not stable, will undoubtedly continue to thrive. Libraries, as information brokers, cannot reject data simply because it fails to comply with existing expectations or because its format of transmission is not yet fully developed. Instead, they must seek to harness its strengths and to educate users on its weaknesses.[1]

**Changing Standards and Preservation**

Changes in computing technology have made both the media and the technical format of old digital materials less usable. Keeping digital resources accessible for use by future generations will require conscious effort and continual investment.

**Ownership versus Licensing**

Licensing brings with it a host of complicated issues. Today many electronic products are licensed. A library has access to licensed contents only so long as it maintains and pays for a subscription. It plays a significant role in the analysis of the long-term value of a resource to a library. Use of licensed database is governed by contract which limits the access. Licenses have mere temporary access. Libraries can lose access to many years' worth electronic resources when a license is not renewed.[2]

**Archiving**

The problem of preserving digital information cannot be solved definitively. Electronic documents are not self-perpetuating. Unless contents are actively backed up, consistently converted to current technologies, or both, an e-resource may not be accessible by tomorrow's user. Until standards are reached on issues such as archival responsibility and methodology and format preservation, electronic-only collections jeopardize a library's long-term obligations to build and maintain a usable collection.

**United kingdom copyright law**

Current legislation in the UK provides limited exceptions to copyright called "library privilege". If a copy is made directly by a user for one of the permitted purposes in UK copyright law, it is known as *fair dealing*. It essentially allows limited copying provided it is 'fair'. The amount that may be copied is normally interpreted as being no more than 5% or one chapter of a book or one article from a single issue of a journal provided it is for research, for a noncommercial purpose or private study. Known as *library privilege*, the

Copyright, Designs and Patents Act, 1988 allows certain prescribed libraries and archives to make a single copy for non-commercial research or private study on behalf of its users. The British Library can provide a copy for this purpose either on site in Reading Rooms or remotely using the Document Supply services providing the user signs a declaration form stating they are adhering to copyright regulations. Remote users must order through a third party library, such as a public or university library, who collect and keep the signed declaration forms.[3]

**Canada law**

The law of copyright also applies to the Internet, and so most individual works found there are protected: using Internet text or graphics without the permission of the copyright holder, for instance, is an infringement of copyright law. However, under its "fair dealing" provisions, the Copyright Act does allow individuals or organizations to use original works without such use being considered an infringement: criticism and review, news reporting, and private study or research (section 29). The Act also exempts certain categories of users, such as non-profit educational institutions under section 29.4.[4]

**Australian laws**

Copying may also be done in certain instances without infringement of copyright when done by libraries and archives for students, researchers, Members of Parliament and for other libraries. Copying of unpublished works and certain audio-visual materials for certain other purposes may also be done without infringing copyright.

Certain educational institutions and institutions assisting persons who have a print or intellectual disability may make multiple reproductions and communications of works for educational purposes or for assisting people who have a disability, under a license set out in the Copyright Act (a statutory license). Such statutory licenses give the copyright owner a right to be paid equitable remuneration through an approved collecting society.

Educational institutions and institutions assisting people who have a disability may for educational purposes, or for the purpose of assisting people who have a disability, also copy television and radio broadcasts, under statutory licenses. Again, the licenses provide for a right for copyright owners to be paid equitable remuneration through an approved collecting society. These licenses also extend to communication within the institution by electronic means.[5]

**Indian law**

Section 52 of copyright act provides some exception to infringement as for the private use and research and criticism and review but not of computer programs. For computer program it provides exceptions as in case of emergence or for non commercial use under sub-section (aa) and (ab). However, in sub-

sections (o) and (p) it provides limitations to library and private users that they can make copies if such work is not available in India.[6]

In copyright amendment bill 2010, there are some materialistic changes with respect to libraries. The first important amendment is insertion of section 2 (fa) which excludes rent acquired from non-profit libraries and educational institutions for a work or computer program from commercial rental. The word library is substituted by non-commercial public library in section 52 of the aforesaid act.[7]

**US Laws**

Copyright law has always sought to strike a balance between protecting the interests of authors and providing access to these works by the public. To this goal, US copyright laws have accorded to public libraries certain exemptions to the exclusive rights provided to copyright owners in section 106 of the Copyright Act.[8]

In 1976, Congress, as part of its general overhaul of the 1909 Copyright Act, created a purposeful scheme in section 108 to limit some of the exclusive rights accorded to copyright owners in section 106 in recognition of the "significant changes in technology" that had impacted the operation of copyright law. Congress sought to update the law to meet the challenges that "new methods for the reproduction and dissemination of copyrighted works" had presented. In terms of libraries, this meant recognizing the impact of photocopying on the notion of fair use and the necessity for libraries to be able to reproduce copies for archival purposes. Thus, section 108(a) provides that "notwithstanding the provisions of section 106, it is not an infringement of copyright for a library or archives, or any of its employees acting within the scope of their employment to reproduce or distribute a single copy or phonorecord of a work . . .," so long as the copy or distribution is (1) not made for commercial advantage; (2) the library is open to the public; and (3) the work includes a notice of copyright.[9] Subsection (a) thus sets out who may claim the section 108 exemptions and under what circumstances.

**1. Reproduction for Preservation and Replacement**

Sections 108 (b) and (c) address the purposes libraries have for invoking the exemptions. Subsection (b) pertains to unpublished works and allows libraries to make three copies of unpublished works for the sole purpose "of preservation and security or for deposit for research use in another library or archives. As originally written, subsection (b) allowed only a single copy of the unpublished work, but the Digital Millennium Copyright Act (DMCA) increased this limitation to three duplicates for such purposes.

Sub-section (c) addresses the reproduction of published works made solely for the purpose of replacement if a published work is damaged, deteriorating, lost, stolen or if the format in which it is stored has become obsolete. In order to use this provision a library must first make a reasonable effort to locate a

replacement copy available at a fair price. If no such replacement copy can be found, then the library may reproduce the published work.

In both subsections (b) and (c), the format allowable for duplication originally meant "in facsimile form," (e.g. photocopy, microfilm). The DMCA amendments changed this limitation in regard to duplications made for both preservation and replacement purposes to include the making of digital copies.

**2. Reproduction for Library Patrons**

Sub-sections (d), (e) and (g) address the need for libraries to make copies and distribute works to their patrons, and to patrons of other libraries via interlibrary loan systems. Under subsection (d), a library can make copies and distribute limited portions of a work from its collection or from that of another library when a patron requests no more than one article or other contribution to a copyrighted collection or periodical. Subsection (e) allows a library to copy and distribute entire or substantial parts of a work if requested by a patron when the copyrighted work cannot be obtained at a fair price. Under both provisions, the library presumes, unless it has notice otherwise, that the copies provided will be used for private study, scholarship or research, and that the copy provided becomes the property of the patron. Subsection (g) simply recognizes the need for interlibrary loans by codifying a library's right to participate in interlibrary loan arrangements as long as the purpose or effect is not to substitute for the subscription to or purchase of works.

**3. Libraries and Fair Use**

Another limitation on the exclusive rights of copyright owners of importance to public libraries is the fair use exception provided in section 107. Section 107 exists as both a "privilege" and an affirmative defense to a charge of infringement. Under section 107 it may not be an infringement of copyright to reproduce works for the purposes of criticism, comment, news reporting, teaching, scholarship, or research if such use is considered fair. The determination of when a particular use is considered fair depends on the following four factors:

**a. The Purpose and Character of the Use**

The analysis of the use under the first factor includes whether the use is commercial in nature or for nonprofit educational purposes. In *Sony Corp. v. Universal City Studios, Inc.*, the Court indicated that any copies used for commercial or profiting purposes are presumptively unfair.

**b. The Nature of the Work Being Copied**

Under the second factor the Court looks to determine the "value of the materials used. In applying this factor, the Court has pointed out that "use is less likely to be deemed fair when the copyrighted work is a creative product." Copyright protection on factual works is limited to the expression of the work.

Facts are not protected and therefore under the fair use analysis, a copy of a work that is fact-based is more likely to be considered fair use.

**c. The Amount and Substantiality of the Portion Being Copied in Relation to the Work as a Whole**

In applying the third factor the Court has considered not only the amount copied in relation to the whole, but also the qualitative value of the copied material. Therefore, if the amount copied is less than substantial to the whole, a court may still find the use to be unfair if what is copied can be considered "the heart" of the material.

**d. The Effect of the Use on the Potential Market for or Value of the Copyrighted Work**

The fourth factor (in concert with the first) tends to be where much of the Court's focus is in making determinations of fair use. In *Sony*, the Court held that in the case of a non-commercial use, the plaintiff must prove that there is a meaningful likelihood of future harm to its potential market. However, if the use is for commercial gain, the likelihood of harm may be presumed. The *Sony* test has been applied in fair use cases going forward.

In the library setting, fair use tends to be more of a concern to academic or research libraries, where copying works for course reserves, course packs and research copies is the norm. However, public libraries are also concerned with fair use. First, under section 108 not all types of media are covered. Section 108(i) limits the rights of reproduction and distribution under the section by excluding from its privileges musical works, pictorial, graphic or sculptural works and certain motion picture and audiovisual works. In making copies for distribution of these types of works the public library would therefore need to rely on the fair use provisions of section 107. Also, if a library has need to go beyond the scope of section 108 (*e.g.* make four copies of a work instead of three), it can do so if such copying would fall within the provisions of section 107.

**4. The "First Sale Doctrine"**

The third limitation on the exclusive rights accorded to copyright owners of importance to public libraries is found in section 109 of the Copyright Act. Known as the "first sale doctrine," section 109 provides that a copyright owner's rights under section 106(3) to distribute copies of their work by sale or transfer ceases once the copyright owner has parted ownership with a particular copy, i.e. once a copyright owner sells a copy of the work, the new owner can sell or otherwise dispose of that copy as she sees fit. This doctrine is what permits libraries to lend books once it has legally purchased those books from the copyright owner. The doctrine does not, however, abrogate any rights an owner has to the intellectual property embodied in the work, only the owner's ability to control sales and distributions of a particular copy of the work that has been legally transferred.[10]

**The Public Library As Intermediary In Digital Space**

The traditional role of the public library as intermediary is being altered by recent changes in contract practice between publishers and libraries, alterations to copyright law, and new applications of technology to digital content.

Publishers have resisted applying the same real space rights to digital works. In the digital realm, traditional library functions are being re-ordered by the use of contract licensing for content. Instead of allowing libraries to purchase content and to distribute that content to patrons via the "first sale doctrine," licensing contracts strip libraries from actually owning content. A license merely grants certain rights to content, pursuant to certain terms, whereas an actual sale, subject to the first sale doctrine, limits the rights a copyright holder has to the work. Licensing results in a reliance on contractual obligations rather than copyright laws for determining how libraries may lend, copy, archive, and preserve content.

One reason for the push to license is that publishers and other providers of digital information have perceived digital distribution as a threat to their businesses and their bottom lines. The application of the licensing model, however, is currently creating a negative impact on the functionality of the public library. Under section 108(f)(4) of the Copyright Act, a library is obligated to adhere to any contractual terms it accepted at the time it acquired a copy of the work. Thus, if a library contracts with a publisher for access rights to certain digital materials, and that contract prohibits archiving rights, perpetual access, or copying, a library will not be able to fulfill many of its most basic functions.[11]

**Conclusion**

Creating a role for libraries as intermediaries of digital content requires a legal and technological framework that takes into consideration current licensing frameworks, rights management systems and the intricacies of current copyright law. The solution lies in a concerted effort to bring each area into harmony with the others. What is needed is

(1) A licensing framework that can enable libraries to provide their patrons full and traditional access to works in digital form;

(2) A reformation of copyright law,

(3) A rights management scheme that can adequately balance both access and security of digital content.

By turning an immediate focus to the current terms of licensing contracts, libraries and publishers can begin moving the ball toward meeting these needs. Art of law reform is creating consistent practices and developing guidelines and standards which can serve as the basis for later codification. Libraries need to begin to make licensing work for them. Using standards and model licensing agreements gives libraries the tools to begin this process.

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# ACCESS TO DIGITAL INFORMATION IN CYBER WORLD

**Dr. J.S. Lohia***

**Abstract**

*The concept of access to digital information is already a comfortingly familiar one, although it has been with us for a staggeringly short pace of time. International organizations, governments, commercial and public sectors have been seized by the concept of the information society and have grasped at the digital information as one of the tools which can help mould this into a reality in cyber age. Impact of state of art technology in information processing, storage and communication techniques have revolutionized the role of information operators worldwide. Conversely the bang of cyber era are reconsolidating the information and its positions, building digital collections, redesigning their services and products to add value to their services. This paper entails theoretical description of digital pattern of information. It also deals with the basic legal characteristic; requirement, complexity and data copy write issues for building digital collections. It concludes with usage, problems and outlook of digital information in cyber age.*

**Introduction**

With the help of modern technology the world has become a smaller place. People from all over world can communicate with each other easily and efficiently. This integration among the different countries across the globe is known as globalization. Globalization can be of different types social, cultural, economic, technological, biological, etc. with the growth of modern technology in this era people have come closer and have begun to understand the different cultures of the people living in other countries. Due to the impact of globalization the communication between the people living across the globe has increased to a great extent. The role of library professionals are vigorous and active participation is mandatory as various channels of communication are available in the modern age. Information seekers are no longer satisfied with only printed materials. Conventional library wanted to supplement the printed information with more dynamic electronic multimedia documents. The users' demands for information delivery in digital form at their desktop are increasing in recent times. We have witnessed information explosion and information technology revolution leading to the emergence of electronic information era. One of the things that people don't remember enough anymore is that when the Internet and shortly thereafter the Web really took off as consumer services in the mid to late 1990s that whole universe was already richly seeded with free content that had been supplied by universities, by museums, by cultural heritage institutions,

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by government agencies.[1] As a result, the information society are facing new challenges, new competitors, new demands, new expectations and variety of information services from users tailored to their wants and needs. The current developments in technological capabilities such as high resolution capture devices, dramatic increase of digital storage media, explosive growth of internet and www, sophisticated search engines, fast processing power and reducing cost of computers, high bandwidth networks and increasing number of electronic publications make it possible for the establishment of digital information. The advancement in technology and various inventions in the past century have brought about a major change in the world today, the biggest being the integration of societies. Thanks to technology, we can now communicate with people from all around the world with great ease. The internet has also allowed us to transfer huge amounts of data to a place half way around the world in a matter of seconds. The various means transportation is a lot faster and we can now travel half way around the world within a day. This has led to global access to information, where different economies, societies and cultures of the world are integrated through a global network.

**Access To Digital Collection**

A digital library can be search for any phrase; it can be accessed all over the world; and it can be copied without error. This is why digital libraries are coming. They address traditional problems of finding information of delivering it to users and of preserving it for the future. Digital information takes less space than paper information and thus may help libraries reduce costs. But most important, they can provide a level of service never before attainable – delivery of information to the user's desk, search capability by individual words, and sentences and information that does not decay with time whether words, sound or images.[2] Thus, library and information services are fundamental to the goals of creating, disseminating, optimally utilizing and preserving knowledge. They are instrumental in transforming an unequal society into an egalitarian, progressive knowledge society. Developments in Information Communication Technology (ICT) have enabled libraries to provide wide public access to all, and to bridge the gaps between the local, national and global levels. Yet the library and information services sector in India has not kept pace with the paradigmatic changes taking place in society. It is imperative that a library should change gear and develop at an accelerated pace. Currently, the success of libraries are depends largely on the nature, content and quality of its digital collections. The basic requirement in creating digital information will be the building of digital collections. The digital collection includes various resources such as electronic journals, books, full text, CDROM databases etc.

As digital resources increased exponentially over the last decade, academic libraries have heavily invested in electronic books, research databases, as well as electronic journals, and made them accessible via their library Web portals. Some libraries also undertake usability initiatives to improve their Web portals in

order to provide users with better and easier access to their electronic collections and services. Despite these great efforts, it has been observed that instead of accessing a wealth of electronic content through the library Web portal, students tend to rely on Internet search engines (e.g., Google), and public Web portals (e.g., Yahoo) even though scholarly information is not always readily available there[3] and they often have difficulty distinguishing authoritative from non authoritative information on the Internet. As a result, underutilization of library electronic resources has become a common concern.[4]

The face of digital information is now widely accepted to mean the use of digital technology in the provision of information services and operations, which include acquisition, organization, storage, conservation and dissemination of information to users. In Indian context the digital information is still evolving and taking shape. The Digital Information Federation defines digital information as: Organizations that provide the resources, including the specialized staff, to select, structure, offer intellectual access to, interpret, distribute, preserve the integrity of, and ensure the persistence over time of collections of digital works so that they are readily and economically available for use by a defined community or set of communities.

Different expressions such as electronic library, virtual library, information without walls and digital information have been used interchangeably to describe this broad concept. Cleveland has gives the following working definition of digital library. "Digital information is information with same purposes, functions and goals as traditional information-collection development and management, subject analysis, index creation, provision of access, reference work, and preservation. A narrow focus on digital formats alone hides the extensive behind the scenes work that information do to develop and organize collections and to help users find information." Since the turn of the century, digital libraries have become an increasingly taken-for-granted part of the networked information environment, becoming established in academic, private sector, not-for-profit, and governmental settings. According to Borgman[5] Digital libraries have become an essential foundation for areas as diverse as electronic publishing and strategic defense, and serve as a primary means to deliver content for scholarship, commerce, cultural heritage, and education

**Upshot Of Cyber Era**

With the growth of IT and its application in every field there arrived a need for formulating IT specific laws and legal bindings. These laws relate to copyright protection, data protection, rights of cyber citizens, analysts of cyber crimes and regulations for the business aspects of IT. As the IT laws were announced, there was a coupling effect in the business, banks, crimes, and thefts. Making adaptation in the listing law structure, in order to bring in the IT culture and thinking to the legal world. Many unthought-of of issues creep up, that still relate to many cases being lodged and argued upon. In some of the cases the issues related to the copying of data. Copyright protection deal with this, but it

does not relate a computer program expressed in object code and for an operating system program to being a proper subject matter for copyright protection, or whenever the copyright protection is extended beyond the actual code of the program to protect the programs structure.

Usage of data on the internet again brings up the discussion of copyright. Since the data is easily available, it may or may not be the property of the authorities putting up the data. Copyright of the data, may just sound as some other typed lines that need not be considered to the extent of deleting from the data to the legal language of copyright protection. Again it is the authorities publicizing their data openly that are in picture. The quality and quantity of data that they openly put up on the net and its effect on the net community should be considered. When it comes to the cyber crimes, there is no end. But the beginning may sound even more worried. As they say "unawareness is not a protection". But, how much pains are being taken, how much effort is being made in order to spread awareness about cyber laws? To how much extent the law governance is stepping up to spread awareness among the IT professional, the cyber related legal acts and clauses.

In this new cyber era, libraries are making a paradigm shift from their present strategy of collection or acquisition of information to a strategy of information access. Libraries have recognized their professional role in creating different capsules of information for their users. The library and information centers are dedicated to support the format and formation of information and a knowledge society.

There has been a huge, worldwide explosion in the use of the Internet. It is already changing the way we work, shop, bank and also the way we live. The PC is becoming commonplace in many homes and there is a general acceptance that this is a way forward. Analogue phone lines are being replaced by faster digital lines (ISDN). Even faster high-speed digital connections will soon be delivered to households, offering a whole day connection to the Net. Many countries around the world are developing in communication technology via satellite, wireless and cable to enhance worldwide Internet access. Accesses to the Internet and its services have already become available through the use of digital TVs and mobile phones in the advanced countries. The use of the Internet by many libraries, universities and the library users have led to a rapid increase in the number of sites. Information technology has had an impact on the way we work for quite some time, but the Internet has now added electronic mail, tele-working and video conferencing to the workplace.

The primary method of building digital collections is digitization. Digitization means conversion of any fixed or analogue media-such as books, journals articles, photos, painting, microforms-into electronic form through scanning, sampling or infect even rekeying. It is the creation of digital collection of information with multimedia features and thus offering faster and easy access to large number of users. Promoting access to information resources is a major

driving force for digitization of documents. Digitization provides solutions to traditional information problems such as conservation, preservation, storage space, multimedia documents and remote access to information collections. Digital information offer new dimensions of easy access to their resources when information materials are in digital form and stored electronically on digital media, they can be used and re-used for any suitable purpose. They can be retrieved easily to answer an information enquiry used to create multimedia applications, or used for resource sharing in either a network environment or for electronic publishing on the internet, or the World Wide Web. As long as the resources are in digital form regardless of whether they are still images, video or sound-and are on a web server, one can use of multimedia and the knowledge of the navigator permit the delivery of national and international information to users at their desktop. In this kind of library environment, printed information sources such as books, journals archival material cannot meet a highly competitive technology. The digital information sources become essential.

**Leading Factors**

For years, information providers have focused on developing mechanisms to transform the myriad distributed digital collections into true "digital libraries" with the essential services that are required to make these digital libraries useful to and productive for users. As Lynch and others have pointed out, there is a huge difference between providing access to discrete sets of digital collections and providing digital library services.[6] To address these concerns, information providers have designed enhanced gateway and navigation services on the interface side and also introduced federation mechanisms to assist users through the distributed, heterogeneous information environment. The mantra has been: aggregate, virtually collocate, and federate. The goal of seamless federation across distributed, heterogeneous resources remains the holy grail of digital library work.[7] Digital information can store large volume of information in digital form for archival management. It provides users with immediate access to the rapidly growing information stored in digital form. It provides users fast access to multimedia information quickly and interactively through the integration of technologies. It offers remote access to expensive and special collection of information from many locations by many simultaneous users. Protection of old, rare and unique documents for posterity is an important function of any library. Paper deterioration and life consequences are major threat to document held in information. Many electronic publications are versions of materials that are also published in print. When publishers put a price on the electronic publication they want to know if sales of electronic information will decrease sales of corresponding print products. If a dictionary is online, will sales in book stores decline (or go up)? If a journal is online, will individual subscriptions change? After a decade of experience with materials online, firm evidence of such substitution is beginning to emerge, but is still hard to find for any specific publication. At the macroeconomic level, the impact is

clear. Electronic information is becoming a significant item in library acquisition budgets. Electronic and print products often compete directly for a single pool of money. If one publisher generates extra revenue from electronic information, it is probably at the expense of another's print products. This overall transfer of money from print to electronic products is one of the driving forces that are pressing every publisher towards electronic publication. Some dramatic examples come from secondary information services. During the past decade, products such as Chemical Abstracts and Current Contents have changed their content little, but whereas they were predominantly printed products, now the various digital versions predominate. The companies have cleverly offered users and their libraries many choices: CD-ROMs, magnetic tape distributions, online services, and the original printed volumes.[8]

The leading factors are:

i. Managing large amounts of digital contents of information
ii. Preserving unique collections through digitization
iii. Performing searches that are impractical manually
iv. Protecting content owners information
v. To improve access to information
vi. Dealing with data from multiple locations
vii. Enhancing the distributed learning environment

Although digital information offers many advantages they are not free from certain problems. Digital information contains information collections predominantly in digital or electronic form. Electronic publications have some special problems of management as compared to printed documents. They include infrastructure, acceptability, access restrictions, readability, standardization, authentication, preservation, copyright, user interface etc. The major obstacle to digitization is that is very expensive, especially to undertake alone in-house digitization. It needs technical expertise to deal with the matter is another obstacle. Digital information is an expensive undertaking. Funding is required to: Purchase the high quality digitization equipments to facilitate the digitization of current traditional information holdings

i. Training for staff and end users on the use of modern technology
ii. Purchasing of other machines such as servers, workstations etc
iii. Subscribing online and offline information resources
iv. Purchasing appropriate software
v. Maintaining of the systems etc
vi. Identifying policy for the sources of funding.

The newly available resources on the Internet and its World Wide Web vastly increase the tools available to researchers. The materials moved from library shelves to Internet sites and other electronic publications. Consequently, user's access has increased because of the new finding aids and tools included in the electronic versions of publications and associated materials.

- Websites can be searched using search engines—such as Google—or online web-based tools
- Reports can be searched using tools included in programs like Microsoft Word or Adobe Acrobat.

**Software Issues**

Greenstone is digital library software used for building and distributing digital library collections, organizing information and publishing it on the Internet or on CD-ROM. Produced by the New Zealand Digital Library Project, it integrates functions such as metadata, full text search and retrieval, multilingual support, support for multiple document formats and administration. Greenstone is open-source software, issued under the terms of the GNU General Public License. The aim of the software is to empower users, particularly in universities, libraries, and other public service institutions, to build their own digital libraries. The Indian Labour Archives was one of the first Indian digital library initiatives to use Greenstone. In India, at present, Information Library Network (INFLIBNET), a consortium incubated under the rubric of UGC, is actively involved in Library Automation, Database Creation, Software Development, Human Resources Development, Information Services and Networking. They have developed a software SOUL based on relational database management language, which is used for cataloguing, archiving as well as enabling online public access of resources. The Indian Institute of Science in Bangalore is closely involved with the INFLIBNET for developing and standardizing protocols of information management for digital library as well as information repository initiatives. The National Informatics Center (NIC) of India has also developed digital library software – DelSis – that is used by the Developing Library Network (DelNet), which is also an effort to network libraries and for resource sharing. DelNet aims to provide access to content in Indian Languages and in Urdu using this software.[9]

**Copyright And Preservation Issues**

There is intellectual property in general, including copyright, rules on fair use, and special rules on copy protection for digital media, and circumvention of such schemes. The area of software patents is controversial and still evolving in Europe and elsewhere.[10]

Copyright has been called the single most vexing barrier to digital information development. Copyright is the right that protects the owners' creative work or ideas. Content owner's information whether in analogue or

digital form has to be protected and financially compensated for use of their work and ideas? The ease with which digital objects can be copied, transmitted and used simultaneously poses a major problem to enforce copyright laws in digital information. Cyber law is the law governing computers and the Internet. In today's highly digitalized world, almost everyone is affected by cyber law. Most of libraries extensively depend upon their computer networks and keep their valuable data in electronic form. Digital signatures and e-contracts are fast replacing conventional methods of transacting business.

Copyright law has been violated in digital environment due to lack of control over content access and reproduction of multiple copies of digital media. There is serious problem in the preservation of digital materials caused by the fact that digital information is very dynamic. The databases are always being updated. What one gets on the web site to day now may not be there in the next few seconds. The digital media are so fragile with a limited shelf life. Further still, the digital information on the storage devices with time will be rendered unreadable by obsolescence of technology, this is due to the fact that information technology evolves very first and the old systems are no longer in use. To preserve the digital information will keep on migrating information from one digital hardware and software configuration. The policy should address these issues. If preservation of digital resources will not be in place then future generations will look back at this time as a digital dark age- a time when, somehow, the records of human knowledge went missing. The digital storage media such as hard disks, tapes and floppy disks have a very short life span due to rapid technological obsolescence. The media used to store digital information become obsolete in anywhere from two to five years before they are replaced by better technologies. Traditional information have been compiling bibliographic details of information materials produced i.e. each country complies and publishes it national bibliography. Information materials in the digital; information are massive and dynamic hence compiling bibliographic details is not possible. Pricing of information in the digital world is going to be very complex. Ownership is expected to give way to licensing pay per use.etc. Archiving and preservation of electronic information may be one of the most challenging of all tasks we have to solve over the coming two decades.

**Conclusion**

The related topics of software licenses, end user license agreements, free software licenses and open-source licenses can involve discussion of product liability, professional liability of individual developers, warranties, contract law, trade secrets and intellectual property. In various countries, areas of the computing and communication industries are regulated – often strictly – by government bodies. There are rules on the uses to which computers and computer networks may be put, in particular there are rules on unauthorized access, data privacy and spamming. There are also limits on the use of encryption and of equipment which may be used to defeat copy protection schemes. The

export of Hardware and Software between certain states is also controlled. There are laws governing trade on the Internet, taxation, consumer protection, and advertising. There are laws on censorship versus freedom of expression, rules on public access to government information, and individual access to information held on them by private bodies. There are laws on what data must be retained for law enforcement, and what may not be gathered or retained, for privacy reasons. In certain circumstances and jurisdictions, computer communications may be used in evidence, and to establish contracts. New methods of tapping and surveillance made possible by computers have wildly differing rules on how they may be used by law enforcement bodies and as evidence in court. Computerized voting technology, from polling machines to internet and mobile-phone voting, raise a host of legal issues. Some states limit access to the Internet, by law as well as by technical means.[11]

Access to digital information has brought considerable changes and yet many librarians remain untutored. Invariably then, librarians cannot respond quickly to community needs. Librarians should be desirous that their libraries should respond to the changing needs of the community and, where possible, anticipate them, Hence they are expected to draw up schemes of induction and training for their staff. There is only limited of co-operative ventures among librarians in the country. If librarians want to play a more effective role in this social, equality they should start exploring ways of putting their information resources, both materials and personnel, at the service of other information and advice agencies by agreeing to keep an update of current information in documents in the country. This will provide access to their numerous users who use their services and this will indeed save time in their search for information. Digital information is expected to bring about significant improvement over current modes of information publishing and access methods. Educators, researchers and students across the world will be among the first to benefit from access to digital information, particularly those in developing countries. The electronic initiative is sweeping the globe. There is mention of e-education, e-government, e-commerce, e-medicine, etc. For librarians to survive in this era the e-information must take the center stage. Librarians must be willing to change from the traditional methods of collection, organization, storage and dissemination of information. The information explosion in the world today has resulted in huge amounts of information being generated, processed, stored and disseminated in digital formats. With the growth of the Internet and World Wide Web in institutions and homes, publishing and dissemination of information resources in digital formats has become common. The biggest challenge now is that a lot of information is being generated and posted on the web. Unlike in the traditional college information where information materials are to be evaluated before selection is done. This is not the case with most of the information available on the Internet. Some of the information available on the Internet is inaccurate, out of date, inappropriate and inaccessible language. The establishment of digital information is a complex task and does not happen easily

and cheaply. It depends upon several factors such as organizations goal, value of timely information, availability of necessary infrastructure and resources for conversion, economics of information conversion, demands from users, government policies etc.

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