

## THE WILLI STEINER MEMORIAL LECTURE 2022

# BAILII: Judgment Day and Beyond

**Abstract:** This article by Jules Winterton, CEO of BAILII, is an expanded version of the presentation he delivered as the Willi Steiner Memorial Lecture 2022. The article briefly recounts the history of the British and Irish Legal Information Institute (BAILII) and its achievements, the features of the service and the challenges of publishing judgments. It sets BAILII in the context of recent government initiatives and outlines plans for the future of BAILII.

**Keywords:** free legal information; open access; archives; BAILII; court judgments

### INTRODUCTION

BAILII provides online free access to the most comprehensive set of British and Irish primary legal materials available for free and in one place on the internet. This article<sup>1</sup> briefly recounts the history of the British and Irish Legal Information Institute (BAILII) and its achievements, the features of the service and the challenges of publishing judgments. It sets BAILII in the context of recent government initiatives<sup>2</sup> for England and Wales by the Ministry of Justice (MoJ) and The National Archives (TNA), and outlines plans for the future of BAILII with its wider remit.

### 22 YEARS OF BAILII

The British and Irish Legal Information Institute (BAILII), [www.bailii.org/](http://www.bailii.org/), celebrated its 20<sup>th</sup> anniversary in 2020. A timeline with some details of the history of BAILII is available on its website.<sup>3</sup> BAILII was established as an independent charity in order to make primary legal information from all the jurisdictions of the UK and from the Republic of Ireland freely available over the internet.

BAILII came into being following public meetings, in particular the crowded 'Free the Law' meeting in November 1999 at Chatham House chaired by the late Sir Henry Brooke and addressed by Professor Graham Greenleaf of the Australasian Legal Information Institute, AustLII. A full transcript of that meeting by Smith Bernal still exists.<sup>4</sup> A steering group was then constituted, consisting of Lord Saville, Lord Justice Brooke, Carol Tullo (Her Majesty's Stationery Office), Amanda Finlay (Lord Chancellor's Dept), Professor Richard Susskind, and Laurie West-Knights, Barrister (Vice-President of the Society for Computers and Law). The first public launch of BAILII was held in April 2000 at University College Cork following invitations from Professor John Mee, Dean of the Faculty of Law, at a time when a pilot service had been created and was hosted at AustLII.

BAILII was incorporated in the UK on 27 December 2000 as a company limited by guarantee and as a charitable trust. This was achieved through the efforts and

vision of Sir Henry Brooke and a group of supporters, and the determination and support of colleagues at AustLII. AustLII was founded in 1995 as a joint project of the University of New South Wales and the Sydney University of Technology and had established itself as a model and practical help for other LIIs around the world. BAILII's success since then owes a great deal to Joe Ury and Roger Burton-West, BAILII's two long-serving and only full-time members of staff.

These pioneers saw the potential of online services and the need for a service free to users. Sir Henry Brooke, whose blog is still available<sup>5</sup> and is still an inspiration, wrote 'From the time I joined the English Court of Appeal in 1996, I was determined to establish a level playing-field in access to the law.'<sup>6</sup> He quoted Ronan Keane, at the time of BAILII's fifth anniversary, the recently retired Chief Justice of Ireland:

*... [I]t is indeed extraordinary, and in some ways, I suppose, redeems one's faith in human nature that a project can be so successful when driven by nothing but the dedication and commitment of the people concerned... BAILII has come to its great success over these five years in having a ... mission in life ... to make sure that legal information is accessible to everybody who needs legal information; be they judges, be they lawyers, be they persons engaged in the teaching or research of law, or be they the ordinary citizen who wants to and is entitled to find out what the law is on any given topic.*

BAILII continues to believe in the initial inspiration and the ideals of an independent charitable publisher of primary legal materials free to the internet and is looking forward to maintaining and enhancing its fast, reliable and convenient services to its diverse user communities.

### BAILII'S ROLE

BAILII has played a key role in the international movement for free access to law as a means to promote

access to justice and the rule of law. It plays an important role in helping people to understand and use the law. BAILII is determined to ensure that public access to case law from jurisdictions throughout the UK and Ireland is maintained and to enhance its role to help users and their lawyers and advisers interpret content. BAILII will continue to play its part in ensuring that free legal information services remain appropriately independent.

BAILII does not operate in a vacuum. BAILII links to other legal information institutes around the world and is a member of the international Free Access to Law Movement with over 60 members worldwide from Abyssinia to Zimbabwe, dedicated to the improvement of access to primary legal materials and through that access to justice.<sup>7</sup> This international dimension and the aggregation of materials on services such as CommonLII, LawCite and WorldLII,<sup>8</sup> facilitates comparative research and the development of the common law.

## FEATURES OF BAILII

BAILII is simple to use, popular, fast, and low cost; currently BAILII's annual budget is about £225,0000 – a relatively modest sum given the extraordinary benefits for anyone wishing to have access to law in the United Kingdom and Ireland free at the point of use. Donations by a wide range of individuals, institutions and organizations form the large majority of BAILII's income,<sup>9</sup> supplemented until April 2022 by a financial contribution from the Ministry of Justice (see 'BAILII and government before April 2022' below), and supported in kind by the Institute of Advanced Legal Studies as part of its commitment to public engagement.

BAILII has maintained close contact with its supporters and user constituencies as well as with the judiciary whose judgments it publishes. Governance of BAILII is by a board of trustees comprising members of the judiciary, representatives from different jurisdictions and branches of the profession, as required in its governing documents. BAILII's Advisory Council is drawn from various sectors.<sup>10</sup>

## Usage

BAILII continues to maintain and develop a website available to all as a subscription-free source of legal materials. It is used by private individuals, advice agencies, charities, students and teachers, the judiciary, legal professionals, and internationally.

Overall, use of BAILII continues to increase and there was no significant drop-off in use during the pandemic with some measures indicating considerable increases at times. There were 87,815,198 page views of the BAILII website in 2021, compared to 79,006,610 in 2020, itself a 26% increase over 2019. There were 3,331,388 downloads, a return to a more usual level after a dramatic spike of 5,399,911 in 2020 during the extended period of home working. Recent weekly usage measured by page requests is 2,670,235.

Usage is anonymous, requires no logon or registration, and there are no cookies, trackers or analytics, or requests to sign-up for newsletters or additional features that would enable the capture of user data. This is particularly important for users who may be victims of abuse, those suffering from medical conditions or insecurity of employment or housing.

BAILII's system is designed for the widest accessibility to the general public and works as well for users who have older hardware and browsers, as for users with the latest equipment and software. Thanks to its design, with no large JavaScript downloads, BAILII functions well on slower internet connections as well as fast ones.

## Content

BAILII includes material from all the jurisdictions of the United Kingdom and Ireland, from the European Union and the Council of Europe, from other jurisdictions such as Jersey and St Helena and also judgments from commercial courts in the Middle East applying English law: the Qatar International Court, the Abu Dhabi Global Market courts and the [Dubai International Financial Centre courts](#).

BAILII contains 122 databases covering 10 jurisdictions, overall comprising over 194 gigabytes of legal materials and 600,000 searchable documents with links to the worldwide network of free access to law partners to which it belongs.

Over 30,000 items are usually added each year, although fewer documents were received during the Covid-19 pandemic. 25,035 documents including legislation and judgments were added in 2021 (22,744 in 2020). Items derive from many sources: with permission from official websites, actively sought from courts and individual judges, from collaborative digitisation projects, donated by or licensed from partners and supporters, in addition to judgments sent by judges.

New judgments are loaded and available within twenty-four hours of receipt, often much more quickly, within hours of arrival at BAILII. Judgments appear firstly in the New Cases section and are then fully indexed into the main database and searchable within the hour.

Documents are published in both html (hypertext markup language) and PDF (portable document format) to facilitate downloading and printing. Formatting is preserved and often enhanced. BAILII is able to display diagrams, content lists, tables, maps, and pictures which are especially important for patent, design and trademark cases.<sup>11</sup>

## Hyperlinking

Hyperlinking is inserted to cited cases within judgments, including links to the full text of cited decisions of the European Court of Justice (ECJ), the European Court of Human Rights (ECHR).

Permanent links can easily be created by users to each item and sections of each item on BAILII, so blog writers,

journalists, and teachers of law can refer and link directly to judgments and other contents of BAILII and there are many thousands of links to BAILII among blogs, articles, student reading lists, and also in other judgments.

## Searchability

Searching across the whole content is very fast, both full-text and by the various marked-up metadata elements, e.g. by date, parties, jurisdiction, court, etc, and the results can be sorted in various ways. There are lists of new and recently added cases by court and most searched-for cases. RSS (Really Simple Syndication) feeds are provided from the website, limited by jurisdiction, court, or even by individual search, and a Twitter account gives notification of recent judgments.

## OpenLaw for Students

BAILII is widely used in higher education as demonstrated by the survey of academic law libraries conducted by the Institute of Advanced Legal Studies (IALS) on behalf of BIALL and the Society of Legal Scholars.<sup>12</sup> The OpenLaw project was originally funded by JISC, at the time the Joint Information Services Committee of the Higher Education Funding Council, in 2005. It comprises lists of leading cases for undergraduate law degree topics selected by academic experts and coordinated by the IALS, using its contacts with academic lawyers. The full text of historical judgments listed were obtained as far as possible where they were not already present in BAILII with the kind cooperation of the Incorporated Council for Law Reporting of England and Wales. The lists are currently being updated with brief descriptions of each case to increase utility for students. There is almost unlimited opportunity for the creation of customised collections by topic only limited by available resources.

## Research in Legal Information

BAILII's remit includes research into legal information and through its association with the Institute of Advanced Legal Studies, University of London, it has the possibility of collaboration in bids for research funding. It was this route which originally funded the OpenLaw project described above. It has also led to digitisation projects with partners of materials including the case papers of the Judicial Committee of the Privy Council and resulting seminars and exhibitions.<sup>13</sup> It sponsors and publishes an annual lecture, named for Sir Henry Brooke, by leading members of the judiciary and eminent academic lawyers, such as Professor Richard Susskind.<sup>14</sup> As part of this commitment to research and with the approval of the judiciary, BAILII assisted in the government funded Oxford University research project, *Unlocking the Potential of Artificial Intelligence for English Law*.<sup>15</sup>

## CHALLENGES IN THE PUBLICATION OF JUDGMENTS

BAILII, in meeting the challenges, shared by all publishers, in the publication of judgments outlined below, built up close working relationships with judges and their clerks and with its users, sometimes lawyers in the case, from whom it receives helpful observations.

In applying a low-cost automated means of publication, BAILII laid the groundwork for much of what we take for granted today. It participated in the adoption of a template to facilitate the automation of publication processes, and in extending the adoption of neutral citations, advising courts on their allocation and allocating citations where none existed.

## Journey of a Judgment

The journey of a judgment is complex. Despite the efforts of publishers who have shared their experience and expertise, a comprehensive map of the data flows is difficult to draw up. Unlike legislation, it is not easy to pinpoint where a final version of a judgment resides, especially where the judgment is transcribed, redacted and may be further revised before publication as a law report.

## Selective Feed

Individual judges and their clerks, until mid-April 2022, sent directly to publishers, including BAILII, by email attachment, judgments which they felt were significant enough to be published. On occasion, sometimes prompted by representations to BAILII by users, BAILII would suggest that a particular judgment might also be made available for publication. This selective approach to making judgments available for publication did not capture the output of the courts comprehensively and it continues under the new arrangements for government publication. It might be argued that many judgments are procedural matters and add little to legal knowledge, although it is difficult to predict just what might become important. However, the new purpose of applying big data analysis to judgments, in particular, might be best served by a more comprehensive approach.

## Format and Metadata

Judgments arrived – and for the moment still arrive – as Word files and are marked up to identify metadata elements to facilitate formatting and searching. This could be a moving target as versions of Word changed and courts and tribunals sometimes adopted PDF format which makes mark-up more time-consuming. A Word template was introduced in England and Wales with the support of Sir Henry Brooke which helped to structure judgments and ease the identification of metadata elements. However, in recent years there has been some divergence from its use resulting in less efficiency in processing the data,

adding to overall costs, and inhibiting innovative data processing. Even within a structured document, there is no fixed vocabulary and there are variations in language, even in how dates and names of parties are expressed.

Neutral citations identify individual judgments and hyperlinking can link previous and subsequent judgments in a case. However, there may be a need for a unique identification number to persist throughout a case. This is by no means simple as changes take place over the course of litigation as parties change or cases are joined.

## Reporting Restrictions, Corrections and Take-Downs

Occasionally judgments are mistakenly sent for publication despite reporting restrictions. Restrictions are not necessarily apparent on the face of the judgment and there is no central register of restrictions, an innovation advocated by BAILII. The restrictions themselves may not be clear, for example where they are imposed at first instance but the judgment is quoted in an appeal judgment.

Publication of a judgment is not the end of the story and involves maintenance of a database to take immediate account of corrections or instructions to correct or to take down a judgment issued by the judge. Simple typographical and citation errors and missing data may be picked up by BAILII or its users, and notified to the court until mid-April 2022 and now by The National Archives (TNA). The reasons for a judgment to be taken down or corrected often involve anonymisation when someone involved in the case, not necessarily a defendant, can be identified either by name or contextual factors. This may be caught before or immediately after the judgment is published. Requests by members of the public, who might be a party to the case, to take down a judgment are referred to the court.

## BAILII AND GOVERNMENT BEFORE APRIL 2022

In 2003 a contract was agreed between BAILII and the Ministry of Justice (MoJ) by which BAILII was added to the existing free distribution by email to publishers of judgments from various courts of England and Wales. BAILII continued its independent publication for the general public of primary legal materials with access to these additional judgments. The contract provided government funding to support BAILII's services to the public, initially £25,000 p.a. and eventually £50,000 p.a., nearly a quarter of BAILII's overall costs.

For many years, in the context of England and Wales, there was sporadic but helpful contact by BAILII with Her Majesty's Courts and Tribunals Service (HMCTS) but the main contact was an ongoing engagement with individual judges. Contact with the Ministry of Justice (MoJ) was mostly limited to quarterly invoicing and the occasional correction of payments by MoJ (e.g. for £12.50 rather than £12,500). This changed in late 2020 with a burst of interest. An extension to the contract to April 2022 was agreed

and invitations were issued to deliver presentations and briefings about how BAILII works, what features it has, what we had learned that the user community wants, and the challenges in publication of judgments. It was early the following year that we learned the reason for the interest.

## GOVERNMENT PLANS

The creation of a government archive for future generations is a major step forward for England and Wales and one which BAILII has long advocated and is supporting while maintaining all of its own content and services.

It will be a surprise to many that in the past there has been no national policy of public archiving judgments of the courts of England and Wales,<sup>16</sup> and even government email systems have not preserved the judgments sent to publishers. BAILII has always supported the creation of an archive of approved final versions of judgments but, as a publisher, never aspired to that function. At last, we do now have acknowledgment that it is a function of the state to keep a permanent record, albeit for now on a limited and selective basis, of court judgments and tribunal decisions.

On 7 April 2021 the MoJ informed BAILII, at a 'pre-meeting', that an archive of judgments of courts and the decisions of tribunals of England and Wales would be created at The National Archives. It was planned that judgments would also generally be available on a TNA website for public access, an endorsement of the initiative taken by BAILII over twenty years ago. The same selection of judgments which were at the time being sent to publishers would be used. The contract with BAILII and the contribution to its costs would not be renewed at expiry in April 2022. BAILII representatives were asked to keep this planned development strictly confidential until a formal announcement was prepared by government, although permission was granted to inform the trustees. BAILII felt obliged to suspend fundraising until it could disclose the plans and discuss them with its stakeholders.

At the time there seemed to be an assumption that BAILII would cease once the more limited online service from TNA was launched. There was even a mention, although not a formal proposal, at that first meeting of the possibility of using TUPE (Transfer of Undertakings (Protection of Employment)) provisions to transfer staff of BAILII to the new service.

Subsequent government announcements about a planned new service for 'important' judgments and 'cases of legal significance' from England and Wales caused some confusion about the ongoing role of BAILII.<sup>17</sup> The wording (judgments being 'moved from BAILII to a new website') led some wrongly to infer that the BAILII service would be reduced or replaced despite the inclusion of: 'BAILII will continue to provide free access to judgments, for other jurisdictions, including Scotland, Northern Ireland and the Commonwealth as well as England and Wales, continuing their great service to date.'

## BAILII'S CONTINUING ROLE

It is gratifying to report that BAILII will continue to provide its popular independent service to its users and to publish all its current range of materials from multiple jurisdictions, including those from England and Wales; no content will be removed, and its databases will continue to be updated, thanks to an undertaking that TNA would provide all those judgments which it publishes itself. All those linking to BAILII in blogs, reading lists and in judgments themselves, can be assured that the permanent links will remain permanent.

The functionality and usability of the proposed TNA service was not known when BAILII first learned of the plans. However, it was known that the proposed TNA service would not include judgments from Scotland, Northern Ireland, the Republic of Ireland, or other jurisdictions available on BAILII; it would not have BAILII's international links; and it would have less potential for third-party content or customised services such as the OpenLaw project. Reassuringly, both the MoJ and TNA welcomed this decision indicating that BAILII would continue to fulfil a useful purpose for England and Wales as well as the other jurisdictions. There is, of course, room for multiple publishers of legal materials, even those publishing for free on the internet.

## TNA ARCHIVING AND PUBLICATION

TNA, in creating an archive to preserve judgments for the public record on a permanent basis and also launching a new online publication service, faced significant challenges. There was a fixed deadline to launch the new services coinciding with the end of the contract with BAILII with no overlap of arrangements or parallel running to help to facilitate the development of the new services. A year from the first intimation to BAILII of the plans was a very short period for a complex project. The new public Find Case Law service<sup>18</sup> was launched by TNA on time on the Tuesday after Easter 2022, a considerable achievement, and continues to be developed. Not surprisingly, it will take some time to reach the level of throughput, presentation, and functionality which TNA would wish.

The creation of the publication system involved, among much else, work to develop an existing legal mark-up language, the outsourcing of parts of the underlying software from registered digital suppliers, for example the editing and publishing functions, and the insertion of hyperlinks.<sup>19</sup> Depending on the ultimate quality of the marked-up judgments and the resulting display properties, TNA's work may reduce some processing by individual publishers and facilitate innovation in the use of the data.

Some of the challenges in the publication of judgments outlined above are implicit in the existing systems of production and distribution of judgments. These are not challenges to be met by ever-more sophisticated software at the publishing stage but by changes at the initial stages of creation of the data. TNA is likely to have more influence in advising on processes outside its immediate control than publishers have had. This may begin to meet some of

the challenges which BAILII has faced and has lobbied to improve over the years. One first step, for example, has been for TNA to ask for textual changes to be incorporated in a revised version of the complete judgment rather than piecemeal instructions to publishers to change the text. This will facilitate version control. Earlier versions, subsequently redacted or taken down, will still be added to the archive but, as now, will not be published.

Looking to the future, one may expect the replacement of the Word template with a more sophisticated document creation tool which might better assist in the adoption of a more standard structure and enable meta-data elements to be more easily identified.

## Coverage of Current Judgments

TNA indicated at an early stage that it would initially publish online about 3,000 current judgments per year, excluding tribunal decisions, based on an external assessment of the numbers of England and Wales judgments published annually by BAILII.

The same judgments which would have been selected and sent directly to BAILII, and other publishers will be sent to TNA for archiving, for online publication by TNA and for onward transmission to publishers. The only difference for judges and clerks will be not in the selection of judgments sent but in the route for dissemination; a secure file transfer system to TNA will be used rather than email to publishers. This does mean that the vision of a more comprehensive archive or more comprehensive publication, is for the future.<sup>20</sup> Some may see this as a lost opportunity for more open justice. Hopefully, TNA and therefore BAILII and other publishers will have access to a larger number of judgments over time but for now the online publication by TNA of current judgments does not increase the availability of public legal information.

There are evidently no plans, as yet, to increase the number of transcripts of extempore judgments made generally available. This would have had implications both for public policy and for the economics of the transcription contracts, although it would relieve individuals and commercial publishers from the need to buy costly transcripts. One can hope that more transcripts will be made available to TNA and via TNA to publishers.

Not all judgments sent to TNA will necessarily be published. One possible difference may result from a risk assessment by TNA, in consultation with the judiciary, with respect to sensitive personal information. As now, it may be that some judgments may be redacted by the courts but in a few cases may not be published, although they will be added to the archive. This will no doubt be monitored as it will depend on the appetite for risk displayed in the process.

## Retrospective Coverage

TNA will be extending the retrospective coverage of their archive beyond the judgments from the past twenty years given by BAILII. TNA have offered an opportunity to give or

sell (up to a contract value of £500,000) content to enlarge the historical coverage, obtaining by gift or buying back judgments not retained by government or the courts.<sup>21</sup>

## BAILII ASSISTANCE TO TNA AND MOJ

BAILII and other publishers have assisted their legal information professional colleagues at TNA with know-how and briefings on the current process of creation, transmission, and publication of judgments, on conversion software, and on experience of user needs and interactions. BAILII continues to engage with the MoJ and TNA to support the development of the new service.

In June 2021, BAILII gave copies of over 40,000 judgments received from judges over the past 20 years to form the core of the new archive. A further 3,500 tribunal decisions were transferred in early 2022 when requested; it had been assumed that these would be taken from the official websites directly rather than second-hand from BAILII but it was explained that TNA wanted the same judgments 'from multiple sources'. A final tranche of copies of judgments and decisions from BAILII will bring the archive up to the launch date in April 2022.

BAILII has also, at the request of MoJ, passed to the MoJ all those emails from judges and clerks over the past twenty years which could still be retrieved. It was established that none of the emails has been kept by the MoJ and presumably not by the other publishers who also received them. The emails and the judgments attached to them included judgments subsequently redacted and instructions to redact which might contain sensitive personal information and an indemnity was agreed with MoJ in relation to this data. It is understood that the information will be used for archival purposes to track the provenance of the judgments added to the archive.

## DISSEMINATION OF JUDGMENTS

The route by which publishers receive new judgments will change from mid-April 2022 onwards and be via TNA rather than directly from judges. It is understood that there have been instructions to judges to send their judgments to TNA but not to send them to publishers. BAILII has been asked to return any judgments sent by judges to it after this date accompanied by wording from the MoJ offering advice on the process of submitting judgments to TNA and informing them that 'You must now report this email ... as a data incident.'

BAILII has campaigned for the need to improve access to judgment data and the information flow by which it reaches the public from judges. It is to be hoped that over time information flow will be improved with more comprehensive, speedy, and structured judgment data for the benefit of all users. TNA have assured BAILII that they will facilitate the continued publication of judgments within the timeframe which BAILII currently operates. TNA supplied publishers with early samples of their marked-up judgments to examine since it is envisaged that in future publishers will no longer have access to the original Word

versions for which their workflow been designed. In the future, as the TNA mark-up is improved, perhaps in consultation with publishers, this may enable publishers to streamline their own mark-up processes.

This means that BAILII is in a position to publish at least all the England and Wales judgments that TNA publishes with the advanced features of its own service and the same quick turnaround as at present. The other jurisdictions covered by BAILII are not of course affected.

## Licences to Re-use Judgments

The status and copyright ownership of judgments have been unclear, touching as they do on the independence of the judiciary, the need for open justice, and official hesitancy about some implications of the application of data analysis to judgments. BAILII, with the support of the MoJ, has resolutely respected the latter concern in its terms of use which exclude 'scraping' or mass downloading.<sup>22</sup> The position has been clarified in practical terms by the introduction of a system of data governance, to coincide with the launch of the TNA service, by means of new licences, rather than the Open Government Licence, administered by TNA for the re-use of judgment data.

There are two types of licence,<sup>23</sup> both free: one, the 'Open Justice Licence'<sup>24</sup> for which no application is required but excludes 'computational analysis of the Information (including indexing by search engines)' among its conditions; and a 'transactional licence' which most publishers and any application of big data analysis or artificial intelligence (AI) will require. The transactional licence is available by application to TNA<sup>25</sup> and it seems likely that TNA will consult the judiciary about some applications. The conditions of both licences make clear, among other requirements, that the material must be presented 'in a way that has regard to the dignity of the Courts and Tribunals, and to their function as working bodies' and 'does not use the Licensed Material in any way that jeopardises the proper administration of justice.'

BAILII was granted by TNA a transactional licence for the re-use of Court judgments and tribunal decisions of England and Wales for publication with the indexing necessary for searching. The licence arrived just before the TNA launch with instructions about how to access judgments from TNA.

## The Free Flow of Judgments

There is one feature of this system of distribution of judgments worth noting. Unlike the system by which independent judges made their judgments public by directly sending them to publishers, the transmission of all England and Wales judgments is in government hands. This is only a theoretical drawback in current times but in other times and other places such a gatekeeper function would give rise to concern. It is to be hoped that the new role for government through The National Archives does not adversely affect the speed or selection

of cases made available for publication as this might compromise both independence and access to the law.<sup>26</sup>

## DEVELOPMENTS AT BAILII

BAILII is committed to maintaining and expanding its content, building on its role as a one-stop shop for materials from England and Wales, Scotland, Northern Ireland and the Republic of Ireland. BAILII's current scope extends to the decisions of the European Court of Justice and the European Court of Human Rights, and to other jurisdictions including Jersey. BAILII has reached agreements to publish the judgments of commercial courts applying English law in the Middle East and is seeking out additional appropriate content to make freely available.

BAILII is also exploring the provision of access to high-quality legal commentary alongside, and interlinked with, judgments. BAILII looks forward to discussions with selected blog authors and legal commentators to offer them an additional route to publicise their work, reach wider audiences and share their insights. This will make it faster and easier for the public and legal professionals to find and access commentary on recent court decisions. Funds permitting, this will be an important

development in BAILII's role in supporting access to justice by providing free access to legal information and in its contribution to public legal education.

BAILII is currently updating and enhancing its OpenLaw service, liaising with academic specialists, to support legal education. The service links to judgments of leading cases by topic for law students and will include brief descriptions to assist in recognising at a glance their significance. An example is the updated list for torts.<sup>27</sup> The project, originally funded by the Higher Education Funding Council, is continued with the assistance of the Institute of Advanced Legal Studies (IALS).

## THANKS TO ALL OUR STAKEHOLDERS

BAILII is grateful to all its stakeholders, including the British and Irish Association of Law Librarians (BIALL), for their continuing support for what promises to be an even more useful free, easily accessible and independent service, and which will continue to be the first port of call for free access to primary legal materials including judgments from all the jurisdictions of the United Kingdom and Ireland.

## Footnotes

<sup>1</sup> This is also an extended version of an article which appeared in (2021, October) *Counsel*, <https://www.counselmagazine.co.uk/articles/bailii-the-next-ten-years>, in (2021) 238 *Writ – the ezine of the Law Society of Northern Ireland* 12–13, [https://issuu.com/www.lawsoc-ni.org/docs/writ\\_238\\_winter\\_2021\\_pages](https://issuu.com/www.lawsoc-ni.org/docs/writ_238_winter_2021_pages), and in the (2022, February) *BIALL Newsletter* 12–13.

<sup>2</sup> This article was written before and immediately after the new arrangements described in the article were introduced for the publication of judgments of courts and tribunals of England and Wales.

<sup>3</sup> <https://www.bailii.org/bailii/timeline/>.

<sup>4</sup> 'Free the Law' [Transcript] at (2000) 1 *Journal of Information, Law and Technology (JILT)* [https://www.bailii.org/uk/other/journals/JILT/2000/free\\_the\\_law2\\_1.html](https://www.bailii.org/uk/other/journals/JILT/2000/free_the_law2_1.html).

<sup>5</sup> <https://sirhenrybrooke.me/>.

<sup>6</sup> <https://sirhenrybrooke.me/2015/10/26/bailii-how-and-why-it-all-started/>.

<sup>7</sup> <http://www.fatlm.org/>.

<sup>8</sup> <http://www.commonlii.org>, <http://www.worldlii.org>, <http://www.lawcite.org>.

<sup>9</sup> Donors are listed at: <https://www.bailii.org/bailii/donors.html>.

<sup>10</sup> <https://www.bailii.org/bailii/personnel.html>.

<sup>11</sup> See for example the Kerwhizz case: *Michael Mitchell v British Broadcasting Corp* [2011] EWPC 42: <http://www.bailii.org/ew/cases/EWPCC/2011/42.html>.

<sup>12</sup> <https://ials.sas.ac.uk/library/ials-information-initiatives/slsbiac-academic-law-library-survey>.

<sup>13</sup> See: <https://ials.sas.ac.uk/digital/digitisation-projects/judicial-committee-privy-council-case-papers> for the project and for a symposium in 2016 chaired by the Rt Hon Lord Carnwath of Notting Hill CVO, Justice of The Supreme Court and Chair of the IALS Advisory Council).

<sup>14</sup> All the Sir Henry Brooke BAILII lectures are available at: <https://www.bailii.org/bailii/lecture/>.

<sup>15</sup> <https://www.law.ox.ac.uk/unlocking-potential-artificial-intelligence-english-law/>.

<sup>16</sup> There was provision for physical copies of transcripts of judgments from the Court of Appeal (Civil Division) from 1951 onwards for many years to be filed at the Royal Courts of Justice and Peter Clinch tells us in 2011 that at that time they were open for public inspection, 'Answering Queries about Access to Law Court Documents', (March 2011) *Legal Information Management* 11(1), 42-44. The Inner Temple Library compiles a valuable more current guide: *Transcripts of Judicial Proceedings in England and Wales: A Guide to Sources* compiled by Adrian Blunt and Sally McLaren, <https://www.innertemplelibrary.org.uk/transcripts-guide-to-sources/> This collection was the source for the microfiche collection, *Court of Appeal (Civil Division) Judgments 1951-1980*, published by HMSO in 1986.

<sup>17</sup> <https://www.gov.uk/government/news/boost-for-open-justice-as-court-judgments-get-new-home> and BAILII's press release: [https://www.bailii.org/bailii/press/20210616\\_bailii-moj\\_press\\_release\\_final.pdf](https://www.bailii.org/bailii/press/20210616_bailii-moj_press_release_final.pdf).

<sup>18</sup> <https://caselaw.nationalarchives.gov.uk/what-to-expect> The link to 'What to Expect from this New Service': <https://caselaw.nationalarchives.gov.uk/what-to-expect> contains a great deal of useful information as do TNA research guides for the broader legal archives.

<sup>19</sup> Tenders open to registered suppliers for a 'simple publishing and editorial system' for judgments, <https://www.digitalmarketplace.service.gov.uk/digital-outcomes-and-specialists/opportunities/16224> and for the enrichment of judgments and legislation e.g. with hyperlinks, <https://www.digitalmarketplace.service.gov.uk/digital-outcomes-and-specialists/opportunities/16014> yet to be fully implemented.

<sup>20</sup> See the section by Paul Magrath on 'A Commitment to Open Justice' about the selective provision of judgments in <https://transparencyproject.org.uk/bailii-and-the-re-use-of-judgments-as-public-legal-information/>.

<sup>21</sup> Opportunity to Supply Digital Copies of Court Judgments to The National Archives (multiple contracts available) – Contracts Finder. The more limited retrospective content on BAILII was obtained for use only by BAILII from other publishers which might decide to tender for this contract.

<sup>22</sup> See the commentary on the subject by Paul Magrath at <https://transparencyproject.org.uk/bailii-and-the-re-use-of-judgments-as-public-legal-information/>.

<sup>23</sup> Both licences are described near the foot of <https://caselaw.nationalarchives.gov.uk/what-to-expect> with links to further information.

<sup>24</sup> <https://caselaw.nationalarchives.gov.uk/open-justice-licence>.

<sup>25</sup> <https://caselaw.nationalarchives.gov.uk/transactional-licence-form>.

<sup>26</sup> See a discussion of this point in 'Judgments as Public Information' by Paul Magrath at (2015) *Legal Information Management* 15(3), 189–195.

<sup>27</sup> <https://www.bailii.org/openlaw/tort.html/>.

## Biography

**Jules Winterton** has been CEO of the British and Irish Legal Information Institute (BAILII) since 2019, having retired as Director and Librarian of the Institute of Advanced Legal Studies (IALS), University of London. He was Chair of the British and Irish Association of Law Librarians in 1994/1995 and President of the International Association of Law Libraries from 2004 until 2010. He is a Senior Research Fellow at the IALS, convenor of the Libraries Committee of the Society of Legal Scholars and a member of the Advisory Council of the Ghana Institute of Advanced Legal Studies.