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Footnotes

¹Rayner (Jonathan) (2008). Net-surfing lawyers warned of compliance risk. *Law Society Gazette* 105(23), 1

²Italicised quotes are from law librarians

³Centre for Information Behaviour and the Evaluation of Research (2008a). Information Behaviour of the Researcher of the Future

⁴Rayner op. cit.

⁵White (Rupert) (2009). Wikipedia Woe. *Law Society Gazette* 106(22), 12

⁶Centre for Information Behaviour and the Evaluation of Research (2008b). Information Behaviour of the Researcher of the Future, 5

⁷*R v Chambers* (2008). EWCA Crim 2467, [2008] All ER (D) 170

⁸Kirby (James) (2009). Flaws in the system. *New Law Journal* 159(7368), 649

⁹Committee of Inquiry into the Changing Learner Experience (2009). Higher Education in a Web 2.0 World, 6

¹⁰Cottrell (Stella) (2008). *The Study Skills Handbook*.

¹¹Centre for Information Behaviour and the Evaluation of Research (2008c). Information Behaviour of the Researcher of the Future, 21

Biography

Natasha Choolhun has been employed as an Information Officer at the College of Law, (Moorgate site) since February 2009. Prior to this she spent four years as an Information Officer at a large national firm. Natasha has built up a good peer network in the City and enjoys socialising with former colleagues and other professionals in the field. Rather predictably Natasha enjoys reading.

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Law Publishing at the Crossroads

Abstract: In the current climate of rapid technological change, upheavals in the legal profession and global recession, Nick Holmes asks “What does the future hold for law publishing?”

Keyword: legal publishing

The publishing revolution

I have been fortunate to have been involved at first hand in the entire modern publishing revolution. When I first started out in law publishing, authors produced copy on manual typewriters, editors used pens and literal cut and paste to hack it into shape, typesetters set the copy in movable lead type or “slugs” and made it up to page in

print trays, and then the presses rolled. So there had not been much progress in 500 years!

Today, as an author and publisher myself, I mostly write in “the cloud” and when I hit “Publish” my articles are automatically styled, made up to page and published instantly on the web, potentially to a global audience (blush!); they are distributed automatically to subscribers via RSS and some of those subscribers will perhaps (automatically again) repurpose and republish them

elsewhere. That's incredible publishing efficiency: all I do to achieve it is push a button!

But publishing is concerned with more than the production and distribution processes; it is about researching market needs, developing products and services to meet those needs and bringing those to market. Now the web – Web 2.0 in particular – has rewritten all the rules. All aspects of the publishing process are now more accessible to more people and that has redefined markets and the relationships between publishers and users. With Web 2.0 we are all publishers now.

That poses substantial challenges for the dominant publishers, who are no longer master of all they survey and must now to a large extent reinvent themselves to maintain their leading position; and it offers substantial opportunities to the smaller incumbents and the rest of us who carry little baggage.

The law publishers

Fifteen years ago one could easily identify “the law publishers” and just about count them on one's own digits. Those publishers almost all continue in business today, though with changes of ownership along the way. Then we had the long-established big two: Butterworths (now LexisNexis Butterworths, part of Reed) and Sweet & Maxwell (now part of Thomson Reuters and including Westlaw and Lawtel). We had other large publishers with substantial law lists like Longman Law, Tax & Finance (formerly part of Pearson, bought by Sweet & Maxwell), Kluwer and CCH (now both part of Wolters Kluwer); and we had a number of independents specialising in a particular area like ICLR (law reports), Jordans (company, but now with a broad list) and OUP Law (academic). Notably we also then had digital-only Context (now Justis), the only electronic publisher of any significance at the time apart from Lexis/Butterworths.

Then along came the web. We now have hundreds of publishers addressing the market: the big two are still dominant; but other niche players like PLC, Complanet and Emplaw have carved out a market; the other previously-established publishers all have web presences; innovative new web start-ups abound; and in the mix we also have a huge corpus of free primary law from OPSI, the Statute Law Database, BAILII and other sources and many thousands of law firms and individual lawyers who publish legal guidance and commentaries for free access on their websites.

This fragmentation of the market and increased competition forced the big two to change strategic direction around the turn of the millennium. LexisNexis and Thomson have now developed diverse portfolios of products for the legal profession largely through acquisition. LexisNexis has gone further in rationalising its business, selling off to Tottel Publishing in 2004 a large chunk of its book and journal lists which did not have sufficient online potential.

Meeting law firm needs

One might assume that, with the vast range of choice now available, law firms' needs *are* being met. That's certainly true in terms of quantity: never before has so much legal information been published by so many. I don't think we can gripe about product quality: standards amongst the commercial publishers remain high for all but the more dubious of start-ups. But as law publishing has become easier and web use more pervasive, so have users become more demanding.

At the top end, larger law firms' needs largely dictate the strategic direction of the big two publishers, and those needs are ever more exacting. But throughout the market there are criticisms of the duo: of arrogance, unhealthy price maintenance and deficiencies in customer service. Meanwhile the newer and smaller players – more nimble and more responsive – go from strength to strength ... until, often, purchased by one of the duo!

In a recent (early September) article in *Information World Review* (tinyurl.com/69oq9p), Tim Buckley Owen spoke to those on both sides about the alleged duopoly – imposing “rigidity and lack of creativity” – and the likely effects of the current economic downturn. With rather rose-tinted spectacles, Simon Drane, head of knowledge solutions at LexisNexis, saw that “as customers experience our new or improved products and better customer service, we are finding that the cost of the products and services they regard as fundamental to their business is less of a talking point.” It's crunch time – with budgets now being rapidly tightened, firms are scaling down subscriptions, choosing between the two major players and negotiating reductions in the cost of information – at a time when supplier costs are rising.

So much for the larger firms. The smaller firms simply cannot afford these headline legal information services and for them even stock-in-trade textbooks are moving out of reach, with loose-leaf works and CD equivalents typically costing several hundred pounds a year to maintain, and slimmer practice books (sometimes bundled with a “free” CD of documents) mostly priced in three figures too. Publishers' prices for these products have typically been regularly increased by double the rate of inflation in recent years, in a desperate attempt to maintain the bottom line, which short-termism is bound to hasten their end.

So the small and sole practitioner increasingly relies on free and low cost or supermarket-style web services to complement dwindling hard copy subscriptions or even to replace them entirely. And the larger firms, despite much larger budgets, are making similar choices.

Free services

According to the American Bar Association's annual *Legal Technology Survey Report* published in September 2008 (tinyurl.com/27eqst), based on responses from approximately 850 lawyers country-wide, the number of US lawyers

using free online legal research services (89 per cent) has, for the first time, overtaken the number using for-fee services (87 per cent). That does not tell us how many *rely* on free services: where there is no contractual obligation to provide a particular level of service, those that can afford to be discerning may well opt to continue to rely on paid-for services.

A good example of this is provided in the UK by the Statute Law Database. While it is a huge boon to many, it is not yet complete: a small number of Acts remain to be loaded and the effects of much recent legislation are not yet consolidated. There is also some anecdotal evidence that it is not entirely accurate. This may be as a result of its incompleteness, but even so, the impression it leaves with some is that it is currently unreliable. Together these two shortcomings are the killer for the larger firms and chambers with sufficient budget to subscribe to LexisNexis or Westlaw or a more specialist service such as Complanet: there is no question that the commercial services still prevail. However, for the smaller firm and the individual barrister, for whom the big two commercial services are not an option, the SLD is winning the day, albeit with reservations.

Many smaller firms will also increasingly rely on free web services to track and follow up on recent developments in their area of practice. A good example is Family Law Week (www.familylawweek.co.uk) which provides free access to all the latest family law news, judgments, analysis and legislation. Typical of such a service, content is provided free as revenue is generated through online CPD training and advertising. With the advent of blogs and wikis and other Web 2.0 tools, a large number of free services have been developed. Most had modest beginnings, but many have developed substantially in content and utility.

The commercial law publishing incumbents are not going to wither any time soon from such competition, but the freeing up of legal information (through BAILII, the Statute Law Database and the public sector in general) will begin to have significant impact as the potential for leveraging and adding value to that information is better developed. At present LexisNexis and Westlaw win and retain business not just because they provide comprehensive access to up-to-date law, but because of their valuable added commentary and other features. Marry the increasing amount of independent commentary from the web with the free comprehensive and up-to-date source materials and they will start to hurt.

Web 2.0

Web 2.0 has revolutionised publishing. Technologies like blogs, wikis and RSS have made the publishing process so easy that countless millions are now publishers and yet more millions are contributors. No longer is publishing simply about broadcasting a message one to many. With the facility for users to respond and contribute, publishing is also about engaging with users, conversing with them and eliciting their contributions.

Use of Web 2.0 is the norm for the new breed of small law publishers. The larger incumbents are finally responding: attempting to engage users through blogs and comment facilities for their articles; developing communities for specific practice areas, such as Company Law Forum (www.companylawforum.co.uk) from LexisNexis and MyComplanet from Complanet (www.complanet.com); and networking with student and other communities on social networks like Facebook. They are also belatedly widely offering RSS feeds – what I would regard as essential modern plumbing – to provide current awareness for many of their services.

But use of Web 2.0 services is still the exception rather than the rule amongst lawyers. According to the ABA survey (above), news websites (79 per cent) and email newsletters (59 per cent) continue to far outrank other media for receiving legal information such as intranets (30 per cent), blogs (27 per cent) and RSS feeds (10 per cent).

The future of law publishing

The disruptive effects of the internet are already clear. Wider and better access to free primary and secondary law resources and to publishing technologies like blogs, wikis and RSS are commoditising legal information. The market for “traditional” product is shrinking and there is intense competition for the online space. New and better online services *are* being developed by the incumbent publishers, but cost-conscious users are substituting free and low-cost web services for their paid annual subscription services. The law publishing industry is in good health, but its makeup is rather different than previously.

Biography

Nick Holmes is a publishing consultant specialising in the legal sector and is Managing Director of infolaw Limited. He is joint editor of the *Internet Newsletter for Lawyers* (www.infolaw.co.uk/newsletter) and blogs on legal information issues at www.binarylaw.co.uk. Email nickholmes@infolaw.co.uk.

Editor's Note

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