

Free v Fee: Drivers and Barriers to the Use of Free and Paid-for Legal Information Resources

Abstract: This article by Thomas Shaw discusses the key findings of an MSc dissertation which examined legal information professionals' perceptions of what facilitates, and what impedes, the use of free and paid-for legal information resources. It also compares and contrasts the views of information professionals working in academia with those working in law firms. It is situated in the context of significant criticism of commercial legal publishing and the existence of many resources providing free legal information.

Keywords: free legal information; commercial legal information; legal publishers; academic law libraries; law firm libraries

Introduction

This article is based on a dissertation which I researched and wrote in the summer of 2005, as part of an MSc in Information and Library Management at the University of Bristol. The research took as its starting point the increasing existence of free legal information resources on the web, such as:-

- BAILII and other legal information institutes;
- Primary legal materials from government websites such as OPSI;
- Open access electronic journals and other secondary sources – e.g. the *Web Journal of Current Legal Issues*;
- Gateways to free resources – e.g. Lawlinks, Lawbore.

Paid-for resources, especially those from the major publishers, continue to thrive. The main aim was to examine legal information professionals' perceptions of what facilitates and what impedes the use of such resources. Additionally, by comparing and contrasting the perceptions of information professionals working in academia with those working in law firms, the research sought to appreciate the differing environments in which such resources are used.

These aims were expressed as the following questions, which the research sought to answer:-

1. What do legal information professionals perceive to be the drivers and barriers to the use of free legal information resources?

2. What do legal information professionals perceive to be the drivers and barriers to the use of paid-for legal information resources?
3. How do 1 and 2 differ between legal information professionals working in academic and law firm environments?

There were a number of inspirations for this particular topic. For example, from working at the University of Bristol's law library, I was acutely aware of the high cost of some commercial legal resources. Additionally, in a previous assignment for the MSc course, I had examined certain free legal resources, notably BAILII. The conviction and ambition of this and other free-access projects, coupled with the wealth of information available from them prompted many questions: Why doesn't everyone use these resources if they are free? Why do commercial publishers, charging large sums for their products, continue to thrive? Do paid-for products really offer something which the free ones cannot? It was questions such as these which inspired the aims of the research.

Rationale

A review of relevant literature was necessary to contextualise the research and provide a compelling rationale.

Firstly it became abundantly clear that, although paid-for resources continue to exist and legal publishers continue to thrive, this situation has been the focus of

significant debate and criticism. For example, Cook (2002, p.10) has referred to the “general trend over the past few years towards the Butterworths/Sweet & Maxwell duopoly in the legal market”, resulting in a reduced range of resources. Shepherd (2004 p.) has robustly criticised the entire commercial legal publishing paradigm, maintaining that the major legal publishers are still wedded to the traditional printed book market, and have “lost the argument and the opportunity” to capitalise on the web as a new medium. In view of this much-criticised situation, it seemed pertinent to examine why paid-for legal information resources continue to be used and what their perceived benefits and weaknesses are.

However, positive views of legal publishers and their products have also been expressed. A number of authors discussed the crucial notion of ‘added value’, maintaining that customers are paying for information which is better presented, more easily retrieved, or which can be exploited more fully. Publishers have also sought to rebut criticism. Stott (2004) from Sweet & Maxwell highlights what she perceives to be the value of her company’s products: “content – information, comment, news and insight which is unimpeachable in its quality [and] value added” (p.3). Again, the research sought to examine such perceptions further.

Many have written about the extent to which free resources pose a challenge to paid-for products. For example, Shepherd (2004, p.1) has described free online information as “the greatest threat to law publishing ever encountered”. However, some literature also recognises the shortcomings inherent in free resources and advocates a hybrid environment where both are used. The research aimed to contribute to these debates by examining why free resources are used and what their perceived drawbacks are.

The examination of information professionals’ perceptions of these issues was regarded as highly apposite, since these will have a bearing on purchasing decisions and on which resources they recommend to their users. Moreover, I felt that a comparison of law firm and academic environments could produce illuminating contrasts. Indeed, direct comparison of these two sectors appeared to have been the focus of little previous research.

Research design

In beginning to develop a research instrument, it soon became clear that this had to be qualitative in nature. I wished to examine people’s perceptions, and quantitative methodology, such as structured questionnaires, would not have provided sufficient depth for this. This did have the drawback of the sample size having to be small, making generalisations from the findings invalid. Instead, a deep understanding of a small number of instances was aimed for, and it is hoped that this may be of interest to those working in similar fields.

Semi-structured interviews were employed. All participants were asked the same set of predetermined questions, although I had the freedom to modify questions slightly, or pick up on certain points. Questions included:-

- Which resources would you typically use for accessing legislation, case law, and commentary or articles, and why?
- What are some of the factors you consider when choosing where to look for information?
- If essentially the same information (e.g. primary legal materials) were available from both a free resource and a paid-for resource, which would you use and why?

In this way, an attempt was made to implement a version of “within-method triangulation” (Flick 2004, pp.179–180). If similar answers were received when asking about the same sort of issues using different questions, the answers could be viewed as more accurate.

In order to identify participants for the study, a ‘purposive’ approach to sampling was adopted (Mason 2002). This involved deliberately selecting participants with particular characteristics required for the research. In order to provide scope for comparison, participants from a range of organisations were sought, such as differing size of information service in law firms, and a mixture of red-brick and new universities. Six participants were required, the sample having to be small due to time constraints.

Participants were initially sought via personal contact. I received a student bursary to attend BIAL’s June 2005 annual conference and spoke to a number of individuals who fulfilled the desired criteria, of whom four took part in the research. Two further participants from academic environments were required. Appropriate individuals were approached by letter and two took part in the research.

Once the research had been designed, a pilot interview was conducted with an information professional from a law firm. This provided an essential test of the interview questions and led to some minor clarifications being made prior to the six main interviews being conducted.

Data analysis

Each interview was recorded and transcribed, and then assigned a code in order to preserve the participant’s anonymity (AC for academic, LF for law firm). Each transcript was then ‘coded’, by identifying each section where a participant had discussed a factor associated with the research questions. A total of 18 such factors were identified (see Table 1). Each individual mention of each factor was then analysed to determine whether it constituted a driver or a barrier and whether it

Table 1 – Factors Associated with the Research Questions

Factor	By whom mentioned
Content	AC1, AC2, AC3, LF1, LF2, LF3
Currency	AC1, AC3, LF1, LF2, LF3
Backfiles	AC1, AC3
Speed of use	AC2, AC3, LF1, LF2
Cost	AC1, LF2, LF3
Value for money	AC3, LF3
Lack of permanency	AC3, LF3
Authenticity	AC1, AC2, AC3, LF1, LF3
Competition	AC1, AC2, LF1, LF2, LF3
Access	AC3
Familiarity	AC3, LF1
Linking	AC2, AC3, LF1, LF2
Customer service	AC3, LF1, LF2
Moral imperative	LF2
Training opportunity	LF2
Disparity	AC1, AC2, LF1
Functionality	AC2, AC3, LF1, LF2, LF3
Value added	AC1, AC2, AC3, LF1, LF2, LF3

Table 2 – Drivers and Barriers – Academic

Free Resources – Drivers	Free Resources – Barriers
Content – AC1, AC2	Content – AC1, AC2, AC3
Backfiles – AC1, AC3	Currency – AC1, AC3
Currency – AC1, AC3	Functionality – AC3
Speed of Use – AC2, AC3	Authenticity – AC1, AC2
Functionality – AC2	Disparity – AC1, AC2
Linking – AC3	Familiarity – AC3
	Lack of permanency – AC3
Paid-for Resources – Drivers	Paid-for Resources – Barriers
Currency – AC3	Content – AC1
Content – AC1, AC2, AC3	Functionality – AC3
Functionality – AC2, AC3	Currency – AC1
Value Added – AC1, AC2, AC3	Cost – AC1, AC3
Authenticity – AC1, AC2, AC3	Competition – AC1
Value for money – AC3	Linking – AC2, AC3
Competition – AC2	Access – AC3
Customer Service – AC3	

concerned free or paid-for resources. Additionally, these results were split into two tables, academic and law firm, to allow clear comparison on this point (see Tables 2 and 3). Responses were then analysed and contrasted. The key findings are discussed below.

Drivers to the use of free resources

Almost all participants viewed the actual content of free resources as a significant reason for using them. One law firm participant asserted that “sometimes

things are available for free ... that are simply not available on paid-for resources”. This was echoed by another:-

“The amount of consultations, legislation, everything that you can get on government websites is amazing. We do rely on them. The amount of information available on there for free is quite a big part of our work.”

Similar views were expressed by academic participants. One noted that inter-governmental organisations have “made great strides in putting up their publications

<i>Table 3 – Drivers and Barriers – Law Firm</i>	
Free Resources – Drivers	Free Resources – Barriers
Content – LF1, LF2, LF3 Currency – LF1, LF2, LF3 Speed of Use – LF1, LF2 Functionality – LF2 Linking – LF1, LF2 Moral Imperative – LF2 Training Opportunity – LF2	Content – LF1, LF2 Currency – LF3 Functionality – LF1, LF3 Authenticity – LF1 Disparity – LF1 Familiarity – LF1 Lack of permanency – LF3
Paid-for Resources – Drivers	Paid-for Resources – Barriers
Content – LF1, LF2, LF3 Currency – LF1, LF2, LF3 Functionality – LF2, LF3 Value Added – LF1, LF2, LF3 Authenticity – LF1, LF3 Value for Money LF3 Competition LF2	Content – LF2 Functionality – LF1, LF2 Currency - LF2 Cost – LF2, LF3 Competition –LF1, LF3 Customer Service – LF1, LF2

and their documents, making that sort of information freely available”. Two academic participants also mentioned backfiles of past content. This specifically concerned BAILII’s JISC-funded project to add important older cases. One pointed out that much of the work undertaken by students involves older cases, and that she would consequently “recommend BAILII a lot more when that comes into play”. This was not mentioned by any law firm participants, perhaps reflecting the greater importance of recent law, rather than historical materials, for law firms.

All law firm participants highlighted the currency of information on free resources. For example, one noted the rapid publication of much free legislation and case law:-

“New acts are put straight on [to the OPSI website] as soon as they are enacted ... The House of Lords judgments, that’s a brilliant site, they are usually on the same day.”

Another noted that information on resources such as the Courts Service website is often available sooner than the same information is available from paid-for resources. Currency was also mentioned by two academic participants but given much less emphasis, again perhaps reflecting the importance of recent material in law firms.

Two law firm participants highlighted the speed with which free resources can be used. For example:-

“If someone needs a House of Lords judgment ... you’d go straight to the House of Lords site, cut and paste the URL in literally half a minute and it’s there.”

Speed of use was also mentioned by two academic participants. One maintained that a judgment can be

located via a free resource “more quickly than you’re going to get it on Westlaw or Lexis”. However, in common with currency, this was given much more emphasis by law firm participants. Indeed, one remarked that “time is money in a law firm. We learn to do what we do very quickly”.

Only two participants expressed a positive view of functionality. One law firm participant viewed BAILII as having particular advantages:-

“It’s easy to navigate through the documents in html, so I can go from one term to the next time the term appears ... I like the search engine. I like the way I can move from a simple search to an advanced search. I think that part in particular was really well designed.”

As discussed below, this contrasts strongly with other participants from both law firm and academic environments.

Law firm participants highlighted the ease of providing links to free resources. One mentioned the advantages of being able to pass such links to external clients. Similar ideas were briefly expressed by one academic participant, who mentioned the advantage of ‘deep linking’ to particular resources in BAILII. However, it is perhaps surprising that this was not mentioned more readily by academic participants, particularly in view of the lack of support of the OpenURL standard by some paid-for resources (see below).

One participant felt strongly that there is a moral imperative to primary legal materials being available freely and that this is a driving factor in her use and support of them. Speaking specifically of legal information institutes, she maintained that “[t]hey strongly believe in the underlying principles of what they are doing” and that they produce “terrific resources”.

A final driver mentioned by one law firm participant was the role of free resources in providing an arena for training:-

“BAILII’s terrific in that respect because it is free ... I can spend more time. I can make more mistakes. I can gradually learn from those mistakes to get targeted results, and then move to a fee-paying resource when I feel comfortable that I’m really able to do that.”

This, she asserted, has advantages over some paid-for resources which charge by the number of searches carried out, or the amount of time spent online. This was not mentioned by any academic participants, although one pointed out that universities tend to be offered flat-rate subscriptions which encourage use and experimentation.

Barriers to the Use of Free Resources

Content was also expressly mentioned as a barrier. All academic participants highlighted articles and commentary as a key problem area. For example:-

“There are very few places where you can get journal articles for free ... [any which are available] are really nowhere near the academic depth students would be expected to have.”

Another mentioned the lack of free indexing services:-

“I can’t think of a single free service that adequately indexes or abstracts a sufficient number of journal articles or commentary to make it worthwhile using.”

Similar views of content were expressed by law firm participants. Indeed, one asserted that “there’s a limit to what you’re ever going to get for free”.

Three participants highlighted a lack of currency. One asserted that, due to the limited funds available to free resources, “you just don’t expect the information to be there very quickly, so you tend to use the other [i.e. paid-for] resources first”. However, another raised the crucial point that these are perceptions, rather than statements of fact:-

“Part of me would expect those [paid-for resources] to be updated more frequently than non-paid resources, but of course they are not a lot of the time. I have a false idea about it and I know I should be looking at some of the free resources more.”

Poor functionality was highlighted by three participants. One criticised the search facilities of resources such as the Courts Service website, stating that she would carry out a Google search of the site instead. Another echoed this, describing the European Union website in particular as “badly organised” and asserting that she would also use Google in preference to the site’s own search facility. However, issues such as content were generally given more attention by both academic and law firm participants.

Three participants mentioned the questionable authenticity of certain free resources. As one asserted, “In an ideal world it would be very clear who the author is, how you get hold of them. That isn’t always the case.” These sentiments were echoed by a law firm participant, who commented “if you just go onto a free database you’ve got no guarantee. You don’t know who’s edited it”. However, one participant was careful to distinguish between “the unregulated internet [where] anybody can stick anything up”, and resources with quality control mechanisms, such as BAILII. This was an issue of concern for both law firm and academic participants, both of whom clearly require information of high quality and known provenance.

Both types of participant saw the disparate range of free resources as a barrier to locating the most appropriate resource. As one asserted “the difficulty in using them [free resources] is finding them, tracking them down”. Another highlighted a “lack of time to find out” what is available. One participant took these ideas further:-

“There are a lot of different sites covering often similar ground and not really providing anything extra. They really should be in communication with each other, rather than spending their time duplicating effort.”

A final barrier mentioned to the use of free resources was lack of permanency and the sudden disappearance of certain resources, although it was conceded that this is probably becoming less of an issue, especially in view of the success of resources such as BAILII.

Drivers to the use of paid-for resources

Content here was also perceived to be a central factor. It was frequently reported that required information was simply unavailable for free. Paid-for resources were also favoured because they contain information relevant to a particular user base. An academic participant highlighted the wide international content afforded by many paid-for databases, which she asserted has distinct advantages for her users. One law firm participant saw particular advantages in Lawtel because of its good coverage of

one of her firm's key practice areas. Content was a significant driver for both academic and law firm participants. There was a consensus that the content of certain paid-for resources meets user needs in ways which free resources do not.

Currency was mentioned by all law firm participants. All stated that their users need information that is the most current, and certain paid-for resources were commonly seen as the best means of providing this. Currency as a driver was only mentioned by one academic participant, although interestingly this participant's university was the only one to run a Legal Practice Course.

Four participants highlighted good functionality. One academic participant saw this as a significant reason for using paid-for resources, stating that "the search engines are specifically designed, it's easier to extract the information in the first place." This was echoed by another academic participant, who maintained that enhanced functionality "is where the commercial databases come into their own". Broadly similar comments were made by law firm participants. For example, one spoke favourably of the ability to download acts as pdf files.

All participants saw the 'value added' nature of content on paid for resources as a key driver. For example, one stated of case law that "you have at your fingertips all the journal articles that refer to that case as well as a list of easily accessible cases which have been cited." Another echoed this:-

"If you want to have anything additional to the bare text of the judgment, so keywords, head-notes and the hypertext linking through to cited cases, that's where the benefits of the [paid-for] databases come in."

Similar views, especially in relation to case law, were expressed by law firm participants, although noticeably less emphasis was placed on this. Nonetheless, an area of 'value added' where law firm and academic participants were in clear agreement was the provision of amended legislation by paid-for resources.

Authenticity was seen as key. The fact that information is provided by recognised commercial publishers and that one is paying for it was deemed to provide a guarantee of quality. As a law firm participant stated, "you do feel a bit more secure checking the ones you've paid for". Again however, as an academic participant suggested, these are perceptions:-

"I do think that librarians like their security blankets ... the idea that if they've paid for something, somewhere down the line it's been quality assured."

Indeed, the only participant not to mention authenticity as a driver was particularly supportive of free resources.

Two participants expressly saw the fact that a resource has been paid for as a driver to using it. One saw this as particularly fundamental, stating that if one fails to use paid-for resources which have been subscribed to, "it's a waste of money, you might as well not have bothered ... I use it because I've paid for it. You want to get your money's-worth."

As noted above, a number of individuals have criticised a perceived lack of competition in the legal publishing market. However, in an interesting contrast, two participants asserted that there is significant competition, with positive effects on the range and quality of paid-for resources. One highlighted the entry of Westlaw into the UK market and the competition this provided to Lexis-Nexis Professional, which produced "significant improvements" among large paid-for resources generally, especially regarding functionality and pricing policies. A law firm participant took these ideas further. She saw smaller publishers and free resources as indicative of significant competition in the UK market. Indeed, she contrasted this with jurisdictions such as the United States, where "you *really* just have Westlaw and you *really* just have Lexis", asserting that "Britain fares very well against them in comparison". For these participants, competition has had a positive effect on the nature and range of paid-for resources.

Finally, one participant highlighted the customer services available from commercial publishers, such as telephone support and free training for users.

Barriers to the use of paid-for resources

Two participants also mentioned content as a barrier. A law firm participant asserted that "sometimes I'm not sure I'm really finding out any more than I did [in my previous firm] with just my one subscription to Lexis and all the free resources." Interestingly, this participant was an enthusiastic supporter of free resources, and perhaps more familiar with the full range of information available for free.

Three participants, both law firm and academic, also highlighted functionality as a barrier. For example, one mentioned high quality international law content, but noted that "it's all hidden in their submenus ... so you actually have to know where it is, you have to navigate through the database." Another highlighted the poor functionality of certain paid-for resources, stating that it can be "so awful and so basic". She was careful to indicate that the problem is "ease of use and functionality. It's not that the databases don't have the content".

Although currency was perceived as a driver, two participants also raised questions over deficiencies in currency. One expressed concern over "the currency

and comprehensiveness of some of the standard works, such as *Halsbury's Laws*", especially admissions by publishers that the online versions are sometimes less up to date than the print versions. Although more law firm participants than academic viewed the currency of paid-for resources as a driver, both saw lack of currency as a barrier. Relying on what is essentially out of date information can clearly be detrimental to both types of organisation.

Four participants highlighted the cost of paid-for resources. This was mentioned in a general sense by two academic participants as something which could potentially limit the range of paid-for resources they could afford. In contrast, two law firm participants were far more critical. One criticised the trend towards large 'one-stop shop' databases because "we just haven't got the budget". Another denounced "more than the cost of living increases in fees", asserting "I'm not seeing any return for my investment". This contrast perhaps indicates a greater emphasis in law firms to provide tangible value for money, and may be indicative of less favourable pricing structures offered to the commercial sector.

Both law firm and academic participants perceived there to be a lack of competition in the UK publishing market, viewing this as having a negative effect. As one maintained, "the worst thing is when you have a fantastic database that's so simple to use, and then it's taken over by Sweet & Maxwell or Butterworths." An academic participant expressed similar views: "because we have these two big publishers, the choice of services is probably more limited than it may be in other countries." However, it is interesting to contrast these perceptions with those of the participant above who viewed the UK market as having greater competition than other jurisdictions.

Two law firm participants expressed concerns over poor customer service. Both highlighted a lack of transparency from publishers. As one maintained:-

"One of the problems you have with a lot of these big resources ... is that they consider themselves above the need to inform their users after a while."

However, this contrasts with the positive views of customer service expressed above.

Two academic participants highlighted the difficulty of linking into paid-for resources. Specifically, this concerned patchy support of the OpenURL standard, whereby users can 'deep link' to particular documents within a resource. One highlighted the problems this causes for the implementation of cross-platform portals. Another asserted that "the law databases are good as standalone units, but to actually be able to link through in a seamless way would be really nice." This was not mentioned by any law firm participants,

probably due to the greater use of OpenURL in academia.

Finally, one participant highlighted access restrictions to paid-for resources. She discussed the problem of obtaining access for some of her users who are not UK registered students, and expected this to be an increasing problem in the future.

Conclusion

A number of themes and areas of consensus emerged from the findings. For example, the type and currency of content available from free resources were perceived as significant drivers by almost all participants. Similarly, a lack of required content was seen by almost all participants as a significant barrier to using free resources. However, certain barriers, such as lack of currency of free resources, proved in many instances to be perceptions rather than objective statements of fact. Many of these findings support previous writing on the subject. For example, views on content support Clinch's assertion that free resources are often successful because they have identified "a niche activity which the big, commercial providers have overlooked" (2004, p.1).

With regard to paid-for resources, content again was a central factor, particularly where it was unavailable for free or was 'value added'. Again, these findings support previous literature, such as Stott's (2004) assertion that this is why customers are willing to pay for commercial products. However, there was a marked lack of agreement on the nature of the UK's legal publishing market, and some findings on this refute suggestions in the literature of a duopoly in the UK.

There were numerous areas of consensus between law firm and academic participants. Questions of content were very important for all. Although the exact type of information required might vary, both require relevant information for their user base. Additionally, unclear authenticity and the disparity of free resources were seen as barriers by both types of information professional; both clearly require a guarantee of the provenance and quality of their information and will suffer problems if it is difficult to locate. Clear areas of contrast also emerged. Speed of use and currency were mentioned more readily and at greater length by law firm participants, possibly due to a greater urgency and need for very current information in such organisations. Only academic participants mentioned backfiles of content, possibly due to the increased emphasis on older material in academia.

Many free resources - particularly BAILII - are now well established and are clearly a permanent feature of the UK's legal information landscape. It seems likely that they will play an increasing role, although a number of the study's participants mentioned a lack of awareness of them or a lack of time to investigate them. There is a

need for such resources to promote themselves visibly, and for information professionals to continue to share knowledge about them. In addition, many of these findings suggest a healthy future for commercial publishers, particularly where their resources offer something which free resources cannot. Indeed, if both types of resource are clear about what they provide, and for whom, then one type does not have to transcend the other.

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Biography

Thomas Shaw studied for an MSc in Information and Library Management at the University of Bristol in 2004–05. He is currently working as librarian for NHS Direct in Bristol, and has previously worked at a number of the University of Bristol's library branches, including the law library.

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The Present and Future for Lawlinks

Abstract: Diane Raper describes the ongoing project at the University of Kent to upgrade the free Lawlinks portal established nearly ten years ago by Sarah Carter. The emphasis is on ensuring linking is working, establishing new links, and generally making the site more user-friendly, both to Kent law students and the outside world.

Keywords: portals; internet; websites; links; academic law libraries; project management; legal databases

Introduction

Lawlinks is one of those excellent brand names like *Current Law*. Whether or not the service delivers to expectation, it is memorable even if the expectations are not explicit.

When I joined the staff of the Templeman Library in July 2006, the most frequent question I was asked was “What are you going to do about Lawlinks?” In my experience, the question most frequently asked usually implies that a priority has been established and the answer, at least initially, has to be “I’m considering it.”