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Developing European legal information markets based on government information

Philip Leith

Karen McCullagh

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***I.J.L. & I.T. 247 Abstract**

This article examines the Directive on re-use of public sector information¹ in light of an EU funded project under the eContent programme (ADD-WIJZER²). In outline, the Directive will allow commercial (and other) information providers low cost access to government copyrighted works. Copyright will remain with the relevant government but it will not normally be able to prevent re-use of this material through exclusive licences etc. The aim of the Directive is to increase the production of information products and thus help develop the information marketplace in Europe. Such a legal information marketplace would be expected to have a customer base wider than that of the legal profession. The research in this article³ represents a series of interviews with a representative sample of those who might be expected to be part of a growing 'legal information marketplace' and what might be the 'added value' which commercial ***I.J.L. & I.T. 248** suppliers of legal information might provide to attract them to these envisaged products.

Importantly, we start from the position that in order to compete successfully in the marketplace it will be necessary for information providers to understand how the legal market place utilises legal information at present and what users perceive as being of potential 'added value'. We will briefly use the conceptual structure of the 'technology acceptance model'⁴ to analyse our interview material.

We will also note that a tension exists between the private and public sector over the dissemination of public sector information and that the Directive needed to resolve several issues if the eContent programme of the information society is to succeed. Such issues include: *access rights*, *copyright*, *competition* rules and *pricing* policies. These have not been attacked in the Directive and we thus feel that it - in comparison to the Proposal for a Directive - offers little to either the public or to commercial re-users of information that is not already on offer at present. The Directive is, perhaps, a failed project in terms of the ultimate aims of the Information Society.

1 Introduction

Governments are generators (and users) of large amounts of information and data. In the Information Society⁵ such information is potentially economically valuable and offers a basis for a new industrial model. Hence, we have seen the introduction of a Directive which attempts to 'free' that information for commercial re-use, and which is to be implemented throughout the member states by July 1, 2005. The guiding idea behind the original Proposal may have been that of the US where federal government materials are specifically exempt from copyright,⁶ but the final version of the Directive is more limited. It suggests that if materials are made available, they should be done so on a basis which is non-exclusive and non-discriminatory. This is less than some might have hoped for - the original proposal required access rather than simply set minimum standards of access.

Perhaps the major difference between the Proposal for a Directive and the Directive itself is the removal of the concept of a 'generally accessible document':

***I.J.L. & I.T. 249** 'generally accessible document' means any document to which a right of access is granted under the rules established in the Member State for access to documents as well as any document used by public sector bodies as an input for information products or services which they commercialise;⁷

a concept which clearly meant that any other user would be allowed similar access to information and resources even if it was also commercialised by that governmental department. There are obviously reasons why governments have not been keen to support this original, wider idea contained in the proposal - the feeling that there might be commercial benefit to the department, particularly from information such as geographic data upon which many new information systems might be built. The arguments against government benefiting commercially from this information are well known and include:

- the information has usually to be gathered/published anyway as part of the governmental task;
- making users pay for licensing agreements is simply a way of requiring payment twice (first through taxation, and second through license agreement);
- information of this sort is a 'public good'.

Pas⁸ is more critical of the goals of the Commission than would we be, suggesting that there is a lack of clarity in what the Commission were attempting to achieve and also highlighting problems which might arise from allowing a public good to become a private good through commodification:

41. One cannot avoid having the impression that by introducing this proposal, the EU is trying to run before it learned to walk. One tries to regulate the use of public sector information on a European level without a total agreement about some essential elements, which should be articulated first. These include allowing a copyright for governments or public agencies; and guaranteeing a general and identical right of access to government information within the whole European Union, its institutions and its member states.

42. Indeed, one cannot fail to wonder on what basic precept, on the basis of which viewpoint, the Commission tries to regulate the matter. Is it one of guaranteeing a fundamental right of access to public sector information for the European citizen? Arguments appear rather to be based on a United States-inculcated view. As a consequence, the proposed **I.J.L. & I.T. 250* regulation may take into account too much the private advantages of commercialization, without providing a sufficient counterbalance for public access. A closing off of public sector information might be the result.

To us it is clear what the philosophical assumption is - and can be gleaned by reading the basic documentation of the Information Society⁹ - since it is also the basis for the ever widening concepts of intellectual property which the Commission has driven into being: the 'Information Society' is the future wealth of Europe and access and utilisation of it is a basic need. As might be expected the Information Society directorate have been responsible for this re-use Directive.¹⁰

In the UK HMSO has weakened its hold over much information recently and has introduced systems such as click-use licensing¹¹ to try to encourage usage and show a willingness to participate in providing publicly useful information. Whether such click-use licenses are really worth the bother is a moot point - for example, when contacting several individuals cited as holders of the license to glean their views on using this system the respondents replied they weren't aware that they held such licences. While the hold has been somewhat weakened and more information (particularly legislative) is easier to re-use it is certainly true that this material has not moved into the public domain and become copyright free. As an example of the easing, though, we can point to **BAILII**¹² and its ability to access judgments which previously were seen by commercial providers of information to be theirs by exclusive license (notwithstanding one view that the ownership of judgments in the UK lies with the individual judge rather than with the Court Service or other government agency¹³).

On a more positive note, however, the term 'documents' in the Proposal has been replaced by 'information' in the Directive which is clearly of wider utility and means that data held in systems such as GIS databases will potentially be available for re-use.

The e-Content programme¹⁴ under which the research for this work was funded is directly related to the re-use of public sector information (PSI). Whether any of the aims we were investigating will actually come to fruition now depends upon the attitudes of individual governments and their desire to withhold PSI for their own commercial benefit rather than the original aims of the Information Society Directorate.

****I.J.L. & I.T. 251* 2 The E-Content Programme & Legal Information**

There was great debate in the early 1970s concerning the way that information retrieval systems were

moving. The issue was perceived to be a conflict between the constitutional rights of the population in a democratic state to access and know the law versus the role of governments to act as stewards of public property. Governments were disinclined to become involved in the costly new provision of electronic legal information, even though that information was legislation which emanated from them. Arguments in the 1970s that there should be national law libraries, where the legislation and case law of a country would be easily available to the lawyer, funded in part by governments and in part by the professional users were supported by assertions that it was wrong for a country's legislation to be only available and controlled by a provider in another country.¹⁵

However, pressure on the Government from legal sources, two or three decades later, finally persuaded it that the right of access was a higher-order obligation than its stewardship of the public's intellectual property and that the latter should be sacrificed to the former.¹⁶ Also, the changing circumstances brought about by the new electronic publishing media have now meant that many of the original reasons for Government declining to take on the task of electronic provision of their own legislation have been overcome: for example, the cost of production of digital materials is now very low where the materials are produced at first instance in electronic format - this was not the situation in the 1970s when access to word processing was almost unknown. As a result, Governments are now much more prepared to be active in this kind of role. For example, the Irish Government prepares an electronic version of its Statute Book¹⁷ which it makes freely available. UK case law, though, is only now - with agreement with BAILII from the start of 2003, and High Court decisions from the start of 2004 - beginning to be handled in any real, centralised and freely accessible manner.

It is into this context that the Directive on the re-use of public sector information has entered. The aim of the Directive (which arose from the **I.J.L. & I.T. 252* Green Paper on Public Sector Information in the Information Society¹⁸ and 'eEurope 2002: Creating a EU Framework for the Exploitation of Public Sector Information'¹⁹) is to build an information marketplace which is based upon government information and the eContent programme is to encourage use of the PSI which will be available under the Directive. According to the Commission:

The eContent programme is aimed at supporting the production, dissemination and use of European digital content and to promote linguistic diversity on the global networks. The eContent programme is based on three main strands of action where EU added value can be maximised:

- Improving access to and expanding use of public sector information
- Enhancing content production in a multilingual and multicultural environment
- Increasing dynamism of the digital content market.²⁰

The Directive is targeted at building a marketplace to compare with a current marketplace of legal services or printing:

The sheer size of the economic value of public sector information in the European Union shows the potential of this area: the value has recently been estimated at around 68 Billion (Euros). This is comparable to the size of industries such as legal services and printing. A better use of the economic potential of public sector information will lead to increased activity and job-creation in the digital content industries. Many of these jobs will be created in SMEs.²¹

This is vital as Papapavlou opines that:

Access to public sector information is of great importance for the information content industry. The information content industry is a big generator of revenue and jobs. It is increasingly obvious that a decisive element in the global information market will now be in information content.²²

Despite these desires, there will still be much information which will not be available particularly since the Directive does not require governments to make available materials they intend to market themselves - including **I.J.L. & I.T. 253* GIS²³ data. However, basic legal materials will most probably continue to be available.²⁴ The EU could have followed the US model where the US Copyright Act precludes federal government ownership of copyright in its materials but the failure to include reference to 'generally accessible documents' will restrict general free access to government materials. The Directive also sets out the principles governing charging which leave much to be clarified:

Where charges are made, the total income from supplying and allowing re-use of documents shall not exceed the cost of collection, production, reproduction and dissemination, together with a reasonable

return on investment. Charges should be cost-oriented over the appropriate accounting period and calculated in line with the accounting principles applicable to the public sector bodies involved. (Art 6).

There are, of course, costs issues in accessing US material at present. We will not deal in this article with the cost/pricing issues in any full details, but note that Love has discussed these matters in the US context²⁵ outlining the various methods of covering the costs of production.

The Directive does not undermine a government's ability to secure income from its own information should it wish. Pas - along with commercial providers of information - has observed that the pre-eminent argument against governments commercialising their own information remains that of fair competition.²⁶ In the print era Government was a mere producer of information whilst private sector publishers added value to both the form and content of information and disseminated it at market prices.²⁷ However this balance has gradually been disturbed because of technological evolution. Little effort and expense is required to produce commercially valuable information (though to produce it in a format which users want to access is certainly not easy). As a result it is arguable that private sector providers now resent and challenge improvements to public sector dissemination which they characterise as unfair competition:

For the private sector, information is a proprietary commodity, and ***I.J.L. & I.T. 254** publicly funded government information is a threat. The continuing growth of commercial applications of government information fuels the information industry's desire to expand its growing markets and restrain government provision of information products or services.²⁸

In contrast Caws-Elwitt asserts that

... unlike other types of goods or services, the very existence of government information is not a raw resource [...]. The concept of unfair competition is therefore a poor argument. In fact the government is supplying private industry with an already-developed resource at no cost.²⁹

The extent to which European government departments will wish to use their copyright in raw information to limit external usage and to limit competition is not clear. It is certainly the case that they cannot usually limit competition between other end-users (due to the non-exclusivity requirement of the Directive) and this merits an exploration of the potential future operating practices of legal publishers. For example, the restrictive agreements which we have seen in the provision of legal information will not be permissible - Smith Bernal, for example, had until recently an exclusive agreement relating to Court of Appeal judgements. If this agreement had been made under the Directive³⁰ it could not be used to discriminate against competitors unless 'necessary for the provision of a service in the public interest.'³¹ Just what this might mean in practice is difficult to predict.

3 The Research Question

Despite the fact that the Directive is less friendly to the Information Society philosophy than the Proposal, it is clear that legal information is becoming more and more available and it is really only the quantity of that information which becomes available rather than the information *per se*. Thus, for example, will information from the court/prison systems be as available in Europe as it is in some of the US states where it is possible to ***I.J.L. & I.T. 255** view the record and photograph of an inmate of some State prisons and to have public access to sex offender registers.³²

This article takes a rather more modest perspective and aims to explore whether the proposed directive will impact upon information providers by reporting the findings in respect of an *eContent* demonstrator.³³ We investigated:

'Is there the potential for widening the marketplace for legal information?'

Our overall strategy to answer that question was:

- choose a legal field, then
- determine what sort of potential user there may be in that area and
- target these potential users to find out what they might want from an 'ideal law machine.'

We chose the area of planning and environmental law, though there were other fields which would have been just as appropriate for this study. Environmental law and planning are areas of significant change, with much European and local dimension.³⁴ We carried out most interviews in Northern

Ireland. This was partly for convenience, but also the nature of NI meant that it was highly amenable to our research -- it is relatively coherent, easy to cover all relevant interests, with a larger than average agricultural industry, and with the end of 'the troubles' the planning system has been under some pressure. Belfast also has a full court up to and including a Court of Appeal. We believe that our findings carry over at least to other 'provincial' areas (that is, outside London).

We therefore conducted 33 interviews³⁵ with a sample of those who had a **I.J.L. & I.T. 256* professional interest in accessing legal information. We defined 'professional interest' widely to include those who worked in fields affected by planning and environmental law and also those who were activists for particular political points of view.

4 Who uses Information Systems and who needs Legal Information?

The argument for access to legal information has been won and can be seen in the BAILII system. However, this is a system which is most appropriate for 'lawyers' since it follows the production system of the courts (rather than being organised in terms of legal topics or legal problems or with annotated explanatory information) and is difficult to access for those without a developed understanding of the meaning of law and how it interacts as a body of professional knowledge. A project to look at expanding the legal marketplace has to consider the current users of and potential pitfalls of access to legal information and while there has been a limited amount of work carried out in this field, there are some conclusions which can be drawn.

For example, having access to information is one thing but using it to its fullest is another: having a thorough understanding of the system and its limitations and advantages is qualitatively different. If the lawyer does not understand how a legal information system is organised, then it is unlikely that good research could be done at all. Berring suggested in the relatively early days of legal information retrieval that:

Amateur researchers can do more harm than good. They fail to understand both the system's limitations and their own minimal ability. Just as attorneys could be liable for poor research with traditional methods, the inept computer researcher may be the subject of tomorrow's malpractice claim.³⁶

While this may be a slightly draconian view of the results of not understanding the system it does point to the fact that to use the system and to use the system *well* can differ markedly. The role of access to primary information in the day to day work of the practitioner is not totally clear, but we believe it to be relatively limited in terms of hours of research against hours of contact with clients. Morris Cohen's article *Research Habits *I.J.L. & I.T. 257 of Lawyers*³⁷ provided an early overview of this problem of deciding just how important legal research is to the practitioner. In one research project covering the provincial UK barrister,³⁸ which grew in large part from the quest to find how lawyers in practice research and use law, the findings were that little 'traditional' research seems to be done at all. There are several reasons for this:

- The lack of time. Lawyers have little time to keep up with the general developments of the law. Most are not specialists in any particular field and the time taken to research all possible areas is felt to be beyond their available time.
- Much of the process of law is procedurally driven and thus procedure, rather than substantive law is the method that lawyers use to 'get things done'. The research found that lawyers showed more pride in getting a procedural point correct than a more legal one.
- In many jurisdictions, there are pressures from peers and judges to keep the courtroom 'running'. This means not getting bogged down in technical argument, but rather letting each side have its say and then coming to a decision.

The flavour of the research findings can be expressed by the views of one, typical provincial barrister, who suggested that most work in court was not carried out in the traditional manner:

You can never ignore substantive law issues ... you have to keep a weather eye on the facts ... but however fancy your arguments on promissory estoppel, if the guy is lying ... You always have to keep a firm foot on the ground. You need to know the substantive law ... but it's tailoring your approach to what is happening on the ground. ... If you are going to court every day with five or six authorities, the judges are going to get pretty damn sick and pretty soon the solicitors aren't going to want to know you because you are not getting to grips with things as quickly as they want ... When you go down to

the County Court here and you see three days work listed for one day, the people who are going to get on, and ultimately satisfy their clients, are the people who are going to be brief but to the point ...³⁹

***I.J.L. & I.T. 258** Webb's study⁴⁰ (from the pre-Web era) of one provincial area of the UK indicates that it was the larger practices who make use of information retrieval (this includes on-line and CD-ROM). The figures for use by size of firm were:

Solo: 0%	2-4: 0%	5-7: 15.2%	8-14: 14.3%	15+: 78.1%
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This kind of result is worrying in that the provision of such computer based legal information was originally supposed to be a way of overcoming the information imbalance between the small practice and the larger one. Obviously, rather than reducing the distance between the two ends of the practitioner spectrum, information retrieval systems seem to -- so far -- have exacerbated this.

There is some anecdotal evidence⁴¹ that in the US the *added value* options available with systems such as LEXIS are, in fact, the most profitable -- such options as the Shepardizing facility. Clearly, such profitability shows a clear need for these functions and suggests that the more complex legal environment of the US (with federal and state legal systems), perhaps together with the existence of judges' legal researchers, means that a culture has developed which encourages the correct citation of legal precedents in a way which has not been so obvious in other jurisdictions. It is difficult for the researcher to determine the actual situation about usage since most useful information is considered too commercially sensitive by the companies involved to make it public. One point which can be made is that the European legal system is now becoming as complex as the US system -- with various 'federal' and 'state' equivalents, and thus the market for the added value options may well increase over the coming years in Europe.

It is important to remember that information is not a simple, atomic piece of knowledge -- its meaning and usefulness will depend upon a number of factors, primarily being that of the role of the user of that information. Obviously, the use which a solicitor would make of a piece of legislation will differ from that which a member of the farming community or a member of a campaigning organisation might make. Whilst it is accepted that legal practitioners use legal information, a review of literature reveals that little is known of their research practices.⁴² Likewise, little is known of the difficulties encountered by non-lawyers in accessing and understanding legal information:

***I.J.L. & I.T. 259** Electronic legal information spaces are arenas for interactions about which we know little -- interactions between the public and black-letter law.⁴³

Bruce is correct in his assessment that:

While we have been slow to study (and too much of the time unable to find out) what it is that people really do with the information we provide, we have been even slower to ask what it is they might be thinking and expecting of us. ... usability of our system must be expressed at least partly in terms of their capacity to serve a public that approaches them with (often erroneous or naïve) beliefs about how law is structured and what it can do for them.⁴⁴

There has, in fact, been little research carried out into use of legal information by *non-lawyers*. However, there are a number of signs that there may well be an untapped market. Users of the LII systems (such as BAILII) are counted according to domain name used to enter the system, and all these projects believe that there is a potentially wide user-base which exists outside the traditional legal marketplace.

Finally some have suggested that legal information systems have changed the nature of legal practice. It is difficult to argue either way that lawyers' thinking processes might have been altered in the past 20 or so years by having computerised access to law. Signs which might suggest they have, might be that:

- more citations are being used in argument than previously;
- the citations are more esoteric (e.g. from other jurisdictions);
- the searching mode of access would be welcomed by lawyers;
- judges would commonly have their own *obiter dicta* and *ratio decidendi* replayed to them.

Unfortunately, there has been little research carried out into these possibilities.

5 Research Findings: Is there a need for access to legal information?

The interview questions explored the deficiencies of methods utilised to access information and elicited difficulties experienced in understanding **I.J.L. & I.T. 260* such information. Their responses are outlined below, and interviewee responses are defined by their roles.

Group 1: Lawyers in Practice

The lawyers (5) interviewed mainly appeared to be driven by client needs. This was not unexpected -- their business is to find clients able to pay for their services, and then service those clients. Many of the lawyers were also involved in providing legal training and/or lecturing. They generally described their knowledge of environmental/planning law as good or very good. Some suggested that they were good in one area but very good on the other. Interestingly, *all* of the lawyers suggested that better relevant knowledge would help them in their workload -- even though they all considered themselves to have good or very good legal skills. One of them noted:

The rate of change of environmental law means that it is difficult to stay up to speed. It's also a very time-consuming process. Keeping up-to-date with planning law also requires considerable effort.

One lawyer had access to a research group within the practice and simply sent a request to them to provide the required information. This research group would provide the lawyer with the required documents 'within 30 minutes'. This is the kind of service which larger practices can afford -- the response to the query about whether they would feel confident about accessing a Directive they had heard about said 'yes' and then, being asked how they would access it, simply said 'I'd ring the research group'.

There was a feeling that they were under time pressure to find materials. Most had a number of techniques which they had personalised -- perhaps going to a textbook first (which seems to be a common tactic), or a web site, and then if still not found, doing more detailed research. These interviewees were working in the field, but often this was not their only field of expertise, so they certainly intimated that getting access to coherent, up-to-date information which matched the queries being asked by their clients was an important aspect of their work.

CD-ROM as a method of disseminating legal information is less used than it previously was (only 1 interviewee used this source of information). The literature on legal information has certainly suggested that users like the fact that there is no 'clock running' in the background, but dislike the fact that most CD-ROMs have proprietary interfaces which are difficult to learn and remember how to use. We did not specifically ask why CD-ROMS were not used -- though some interviewees indicated problems such as difficulty of use, difficulty of networking, difficulty of obtaining CD-ROMS specifically related to NI. It may be that the web-interface which is standard to all Internet resources has proven easier to use, and this resource also removes the time pressure from using pay-by-access-time systems.

Overall, the responses to the question concerning their ability to **I.J.L. & I.T. 261* understand the legal materials which they found indicated that they felt confident with the materials.

Group 2: Commercial Firms involved in Environmental/Planning Issues

We interviewed some of the eventual commercial users of information (6) comprising waste, quarry, energy and advisory bodies including an ADR specialist. The advisory agency was set up as a charitable organisation by business to support business in environmental issues. The individuals we spoke to required understanding of legal issues. They were involved in training other staff and deciding policy and procedures to be followed. Also, they were involved in educating others (for example, local authority staff) on the business issues and practices in their company.

The expertise claimed in planning/environmental law was 'average' or 'good compared to the general population'. It is clear that they see themselves as needing legal information (and would welcome more) but, also perceive potential problems in that they are not legal experts. For example, one suggested:

I know all the relevant law for my job. If I need advice I contact [our expert solicitor]. I ask her to check the legal position regarding any environmental consultants we employ -- to ensure that if their advice is inaccurate/defective -- they, not us are legally responsible for providing compensation etc.

The advisory service also thought that they had to be careful with the knowledge they possessed:

We are always careful not to give specific legal advice because we cannot be certain we understand the law fully. We only give general legal advice. Better access to information is the key. Also legal documents are not good at stating the key points. For example, it's better to have 'If you are a manufacturing company you should do these 5 things to comply with the legislation'.

Their use of legal information was also reasonable. The interviewees all described techniques where they would find legal information, and certainly appeared to require access to this on a reasonably constant basis. They were all aware that they had to keep up to date with what was happening, but that they had to be careful in interpretation -- if they felt that there were problems they would seek clarification or advice from government or lawyer.

Group 3: NGOs

Due to the nature of the planning/environmental field, many of those **I.J.L. & I.T. 262* actively involved in using legal information are employed or active in NGOs. These may be campaign groups, advisory groups, wildlife organisations etc. All interviewees (11) noted that they were charitable organisations and thus run with limited facilities and access to information. Expertise is obviously required in order to provide advice, campaign and advise properly, these all being activities that the NGOs were involved in. All felt that they had reasonably good understanding of planning law, but all felt that they could benefit from better access to legal information.

Their use of legal information was also reasonable. The general attitude of all these users was that they required law but had a difficulty in getting it. There appeared to be two main approaches to finding information. First, because much of what they were interested in was of European origin, they would go to the Europa website. Second, if they wanted information, they would ask someone else where it could be found or for interpretation. NGOs thus appear to be involved in a community which shares information quite freely and is happy to provide advice and backup where they have expertise and other groups do not.

We interviewed one politician who had an active interest in environmental issues and it is useful to consider his replies here. He gave advice in a broad manner to member of the public who were his constituents, and also as a member of the relevant environmental committee gave views and attempted to modify legislation. He felt that his understanding was 'good'. The materials he used were primarily the Internet, statute and government reports, newspapers and magazines.

In order to understand the proposed or existing legislation, this interviewee had access to a research facility but also seemed to utilise the expertise of both government departments and NGOs. There was a sense that he was looking for a balance of views, and was prepared to seek these out, but not through looking at the sources themselves, so much as getting interpretations from others. For example, when asked whether he would be able to find a copy of a Directive, he suggested 'probably not'. In his position, of course, the actual mechanics were not so important -- a library staff and researcher were available to carry out the actual search for the document.

Group 4: Government

We interviewed several (5) government employees involved in planning issues, particularly with regard to policy development. The self-perceptions of expertise ranged from very good (an academic on secondment) to 'below average'. Those suggesting less than good knowledge appeared to see the field as very wide ranging (particularly since they were involved in many specialist areas) and were aware that they did not have specialist knowledge in all areas. They all provided training and consultancy services to colleagues, politicians, lawyers etc. The interviewee who mentioned that **I.J.L. & I.T. 263* lawyers required training, noted that the general understanding of planning issues amongst lawyers who were not experts was very low. All felt that easier and better access to information would help them -- particularly in the areas in which they were not directly expert. This suggests that government users of legal information have very wide-ranging information needs.

One interviewee stated

I always refer a legal query to [our legal] team. I have never used the library, and am unsure of how to access legal information, I would simply request a copy of the legislation from the library or use HMSO.

However, later in the interview he did suggest that he used the Europa website for access to Directives. He also suggested that it could be difficult to get time with the legal team to discuss his queries, but despite this, 'I determine what policy is on the basis of legal opinion'. This interviewee suggested that there is indeed a need for legal information, but that some of those who can use this information are put off by the difficulties of accessing it in print form. He appears to be a classic, potential recipient of a 'Value Added' legal information service.

Two of the interviewees had very high legal skills and were competent in their knowledge of law and how to access it. However, as one -- an academic lawyer on secondment -- said:

A lot of policymakers are aware of their knowledge limitations regarding law. This causes stress in the department. [The department] is traditionally reliant upon the Departmental Solicitors Office for legal expertise -- however they are very short staffed and take a long time to respond. I am the first in-house lawyer, and now colleagues are stressed that they can't get instant answers from me.

Group 5: The farming/advisory community

This final group could be seen as testing the limits of the potential marketplace. Planning law, but particularly environmental law is of high import to the farming community. They are the recipients of the regulations which come from the legislative process. But rarely has the literature of legal information retrieval considered these as potential users of legal information. If this group has an interest, it suggests that the marketplace could indeed be substantially expanded.

The group included lecturing staff at an agricultural college and representatives of the farming press and farming organisations. There were 6 interviews in this group.

The all felt that their expertise in these areas was 'good in comparison to the general public'. All answered positively that access to better, relevant knowledge would help them. Some appeared to suggest that their need **I.J.L. & I.T. 264* would not be constant, since they said that this access would be best 'as and when you need it'.

Only those involved in farming organisations gave advice which could be called 'legal'. This was to farmers. These respondents also suggested that they would try to advise (that is, lobby) government departments on legislative proposals during consultative periods.⁴⁵

Access to materials for most of the interviewees seemed to be average. Only the farming press claimed to have good access to library facilities. Most appeared to use the Internet and to know of the *Europasite*. One respondent -- from a farming organisation -- noted that the Internet was time consuming but did provide 'new ideas/different approaches that I have not previously considered'.

Most of this group used personal contacts with the relevant government department to get information. Some would use a solicitor, but this was viewed as an expensive option. Another suggested that, since they were technically within government (as a lecturer), they had reasonable library facilities, but these were not as useful given a lack of legal training:

Because I am within government, I have greater access to information that is relevant. I am familiar with the legislative system because I have been involved in policy development.

But when asked about the disadvantages of their current access method to law, this same person suggested:

The system is entirely ad hoc -- no planned approach to accessing legal information. I have no legal training. I would appreciate an idiot-proof guide to accessing and understanding legal information

6 Research Findings: How might Added Value be generated?

A widened marketplace suggests that the BAILII strategy is only part of the answer: after making the information available, is there some way that ICT can be used to make it more understandable and usable by a broader range of people than those who traditionally use law? The question can better be set as:

*Are there ICT techniques which could be applied to add value to legal **I.J.L. & I.T. 265* information, which would significantly increase the commercial value of the raw information?*

Thus, careful thought is needed as to how best to build tools to encourage present users to use the

system more frequently and also how best to build tools to attract new users from the potential groups outlined herein. We asked interviewees to outline what techniques for information access might be seen as useful to them, and also -- what their 'ideal law machine' might look like? In order to provide the best overview of the nature of this ideal law machine, we quote quite heavily from the respondents themselves.

Table 1 -- potential AVM's offered to interviewees
Adding Value Method
Knowing what is in force
Commentaries explaining history/function
Links from legislation to case law
Tie European and local law via links
Access to a discussion list
'Practical' information
A help-line

Group 1: Lawyers in Practice

Whilst the specialist lawyers welcomed the first of these (Table 1) options, they were mostly sceptical about the latter three. For example, one of the solicitors in our group suggested:

A discussion list would be of little use -- we have to provide specialist advice. (1) We would be worried about the supposed expertise of others (2) we do not want others to obtain legal advice from us more cheaply than by officially instructing us (3) we are worried that other solicitor firms might seek to glean knowledge and expertise from ourselves, without disclosing their identity -- do not wish them to profit from our hard labour (4) afraid that someone might rely on any advice/ suggestions we might make -- and then try to sue us for negligence.

On the usefulness of 'practical information', this same solicitor suggested that it would not be of much use. In any event, her perception of what 'practical information' was, seemed mainly to be textbooks:

Not much use -- Usually provided by textbooks e.g. [xx] on Planning Law, [xx] on Environmental law

***I.J.L. & I.T. 266** And on a help-line:

We would not seek an advice-line, as (1) we would seek specialist advice -- unlikely that staff will possess sufficient expertise (2) response is unlikely to be immediate -- clients require urgent answers.

Only one of the other lawyers in practice thought that these three aspects might be useful or had no reservations. However, this was the person who usually handed over their research query to the research group, so that may have affected their view.

On their ideal law machine, three representative views are as follows:

A computer system, which provides regular email, updates e.g. from property PLC -- which gives summary of High Court Decisions with hyperlinks to full decisions. This provides quick, convenient access to legal information -- in a profession where speed is of the essence (e.g. faster than waiting until decision is published in Journal of Planning Law).

We would like easier access to NI Court decisions -- we have to pay £5.00 per sheet -- it is a deterrent factor -- which does not reflect access to justice/information. All High Court decisions should be available on the Internet.

If we were to pay for a computer system -- we would like information to be consolidated e.g. consolidated versions of legislation -- otherwise it is not a financially worthwhile improvement on existing materials.

The system must be easy to navigate and user friendly e.g. we recently had a trial of the Journal of Planning law -- and chose the print version over the internet version, because the Website was too

difficult to navigate.

This lawyer indicated part of the current problem -- the diversity of legal information and difficulty in knowing what is available. BAILII had -- at this point -- been putting up Northern Ireland decisions and therefore the High Court judgments were available on the internet. However, the judges in the High Court in Belfast do not pass on all their judgments, preferring to keep those they deem 'not interesting' out of the public domain. Lower court decisions are not available.

And the second:

A one-stop shop -- combining all elements I have mentioned e.g. colour-coded way of knowing what legislative provisions are in force. It should have a comprehensive index. It should be fast to load documents, easy to read, and printing different amounts e.g. whole/sections of document should be possible. I would like an on-line copy of legislation to have the same presentation format/layout as a paper copy -- it impresses clients. We need to ensure accuracy -- I have had problems **I.J.L. & I.T. 267* with on-line legislation where word order has changed/ important word have been omitted.

And the third (who uses the research group):

A personal researcher (human) -- a machine can't do practical application/interpretation of law.

A computer system must be easy to access (1) user friendly-indexing/ searching system. (2) Properly cross-referenced. (3) Regularly updated. (4) Have ways of knowing which provisions are in force (e.g. strike through of amendments). (5) Consolidation of legislation would be an added advantage, especially consolidation of statutory instruments. (6) Ease of printing. (7) It would be great if the system included access to local planning decisions and were integrated with other registers e.g. if building control register were linked with Habitat directive register. I would like the system to support local authorities and government departments in improving access to their information.

Group 2: Commercial Firms involved in Environmental/Planning Issues

One respondent thought that there would not be much difference in usefulness from these (Table 1) options. This respondent either used CEDREC⁴⁶ or called a contact solicitor instead

I probably would not use [a help line] as I would prefer to telephone a solicitor/regulatory authority instead.

Another pointed that practical information was very useful to the small firm:

A SME needs to know which legislation affects it, how, and what do they need to do. There needs to be an interrogative database to process this information and inform re legislative requirements -- *Netregs* aims to do this -- but their system is not yet perfect.

But that it also mattered who provided this practical help via a help line:

There is an environmental help line -- funded by government -- InvestNI. It is well-resourced (full legal team) and useful - they will give specific interpretative help, but people don't trust one government department not to talk to another government department and are afraid to use it.

The ideal law machines for this group were:

Ideally a person, as a person can always provide more interpretative help. A computer system would need to be interrogative i.e. need to be **I.J.L. & I.T. 268* able to create queries and have computer respond to them. There needs to be a database with filters. Front end must not be overly complicated. Should be able to print whole document or specify which pages you want to print. There should be email updates re pending legislation -- we need to be prepared in order to advise companies as soon as legislation is enacted.

A simplified computer system that provides access to all relevant information, and is cross-referenced in the way indicated [in table]. It should be keyword search based, and not require high levels of computer expertise.

A search engine with keyword searches and similar style and format to CEDREC. An added bonus would be interpretative summaries of legislation. Access to relevant case law would be useful. I don't like pop-up windows. Documents must be easily printable

Printing was a topic mentioned by several of this group. One noted that pdf format was useful since it meant that information could be kept 'in a file'. This appeared to imply -- as with other interviewees -- that they wanted to be able to build up (via cut and paste) their own collection of information.

Overall, the users wanted simplicity, 'no flashing graphics' and the kinds of access methods which were basic but focused on usable information (e.g. email updates, newsletters).

Group 3: NGOs

NGOs members mostly thought that all of the options (Table 1) would help them in their work. However, there were a number of comments made, particularly relating to the help line and to the nature of practical information.

With reference to the help line, there was more evidence of worry that a help line may be used to push a government line: 'Whose help line is it? If the government runs it then government will provide the answers that suit its agenda. Great if it was a factual help line. It would need to be impartial.' Another thought it would cost too much to run and they would not be able to afford access due to being a charitable organisation.

The idea of what is practical once again seemed to depend upon the background and expertise of the respondent. Those who had a better feeling for law would feel that they knew the formal legislation and case law, but wanted to know how it was being interpreted at a local level:

Practical = interpretation i.e. what the law means on the ground. For example, enforcement provisions could be practically demonstrated 'thou shall not emit pollution above 6mg/month -- to be recorded/monitored weekly/monthly' rather than 'thou shall not exceed pollutant levels'. It should be easy to understand what legislation means to a **I.J.L. & I.T. 269* small business or householder i.e. how they could use it to object to a planning application.

Another suggestion from this respondent was that an email help line would be sufficient -- just a few words rather than reasoned opinions -- 'a pointer in the right direction.'

As to the 'ideal law machine,' there was generally a feeling that the system had to be easy to use, subject based and almost all who referred to searching suggested keyword searching was essential. Typical responses were:

Either a book or a website. A website would probably be better for access and storage than a book. It should be subject based with sub-categories. It should have links to EU legislation, and domestic legislation, case law and explanatory information regarding the intended aim of the legislation. It should have regular updates regarding which pieces of legislation are in force.

A computer system with a simple portal -- Internet databases with integrated solutions i.e. EU legislation linked to Domestic legislation and links to case law. Links to interpretation notes, Daily debates. The website should be navigable on a topic/keyword basis. I would like clarification of court calendars -- it is impossible to find out when cases are listed for hearing in EU/National Courts. The system should highlight important provisions of new legislation, possibly through a news service, which advises of pending legislation.

A computer system with the following features: keyword searches, call line to answer queries and provide details of relevant legislation. Topic search facility e.g. wetlands. Within topic search should be able to access (1) relevant directive and previous convention materials e.g. Rio Convention (2) find out details of previous legislation (3) links to national legislation of different countries, different colours to indicate what provisions are in force (5) UN materials (6) comments on changes/amendments e.g. marginal notations of changes (7) links to practical commentary (8) links to county development plans (9) details of cross-border effects e.g. river basin districts/road plans -- map links would be useful (10) print out document facility e.g. in one piece, without the need for expensive tools.

And one didn't really want a machine at all:

A person -- a human can interpret all types of legislation. A computer cannot anticipate all possible questions -- and you can't question a computer to the same extent as a person. A telephone hotline/online service would be ideal. It should be a two-tiered service (1) an on-line list of FAQ's and answers (2) send an email/contact a person with specific **I.J.L. & I.T. 270* query. Any Internet based system should also incorporate the features mentioned in [Table 1].

Group 4: Government

The only resource (Table 1) which was not seen to be useful by one respondent was a help-line, and if read properly, we can see that this interviewee wanted a help-line, but one that was provided by legal staff:

Complex legal issues should be referred to our legal department -- they may employ experts or counsel.

Notions of the ideal law machine followed the idea that law should be made 'coherent' and that any system should be organised by keyword:

A simplified computer process. A simple, accessible system using keyword search. It should indicate what pieces of legislation are in force and how it has been interpreted or applied. It should provide links to government reports.

A computer system which is easy to navigate and which has all of the above features i.e. links between EU and national legislation, case law etc.

In the [department] there is a need for greater collectivity of information, expertise and experience. A team of in-house legal experts should support the policy officers. Need for greater, well-constructed training, funding and dedicated staffing. There is a need for greater integration between different government departments' e.g. [department] website is poor and of limited use -- though it is linked to [parliamentary] website. For example -- I have no (Internet) means to find out how planning decisions were reached -- I have to ring the relevant department and place a submission for information. Likewise when a person in law reform office is on holidays -- no one else can access his or her documents -- can make it impossible to amend pending legislation.

The view from a local government official emphasises that local area plans (map based) are an integral part of how they see 'legal information':

A computerised system properly structured and managed and updated regularly following liaison with users. You need to be able to contact a human administrator for interpretation of legal materials. A system should have all [table] features. Developers of system should liaise with ICT section of council before they develop a system -- to ensure that it is compatible with our existing systems. The system should be a mix of both keyword searches and maps. Maps are particularly relevant for planning issues. There should be cross-referencing of 'family' of planning policy guidance e.g. regional -- sub-regional-local and classifi **I.J.L. & I.T. 271* cation by topic order. The system should indicate which information is draft/approved and which sections are relevant - e.g. the metropolitan area plan and transport plans could be easily interpreted and related to GIS and digital layer photography. The system should list all DCANN's, dates, consultation deadline periods and territory covered and a simple guide to what these documents contain. It should also be linked to PAC decisions. The system should be available to and accessible by the public.

Group 5: The farming/advisory community

The respondents were clear that what they wanted was relatively straightforward information, indicating that they wanted all resources in Table 1.

The practical information related to knowing what the farming community should be doing ('lists of 10 things ...'). It was interesting that they wanted practical information from discussion lists and help-lines, but were suspicious about who might be taking part. One suggested that they would only use if a discussion list if they knew the true identities of the other members. Another said:

It depends on the knowledge and accuracy of others. I would also want to ensure that I would know the true identity of the other participants as I feel that government departments could use such a forum to circulate their own agenda and influence the proposals or queries of others without revealing their identity.

This same respondent pointed out that a help-line suffers from the same kind of problems relating to government information and perceived 'intrusiveness':

[government departments] have specialists but it is hard to get anyone to take responsibility for providing accurate advice - they are afraid of being held responsible, so they keep passing you on to

someone else. Also some of our members are afraid to ring government departments in case they invoke inspections from that department or other departments.

On the question of 'ideal law machines' the group were reasonably cohesive in suggesting, for example:

forthcoming or newly enacted legislation. It must be easy to search e.g. a farmer could type in that he is a farmer and farms in a LFA and ask for a list of all relevant legislation - so that he can ensure he complies. There may be potential for a mapping system - especially if it indicates which areas are affected by particular legislation e.g. ASSI - EU Habitats directive.

A computer system with [Table 1] facilities that is easy to navigate. There **I.J.L. & I.T. 272* should be an option of contacting a human as a last resort if you can't find or understand information. This person would need to be an agricultural specialist. It would be useful if we could access information on the implementation of directives in other EU member states. There should be a variety of search methods, probably keyword and topic. Map presentation could be useful - am not sure how it would work - would like to see a demonstration before I comment. Printing must be easy - i.e. whole/sections of document.

A computer system comprising the features in [Table 1]. An easy to navigate system e.g. topic and keyword searches. I think maps could be useful, given that many uses of land and legal compliance issues are stipulated by legislation marking them as (Area of Special Scientific Interest) ASSI, (Outstanding Natural Beauty) ONB, (Less Favoured Areas) LFA's. It would be useful if maps indicated these areas, and linked to relevant legal information. You should not have unnecessary flashing graphics, but there should be tasteful use of colour and attractive presentation, to sustain user's interest in site. You should be able to print either whole document or as many pages as you wish. I dislike how you can't copy and paste within Adobe documents.

I would like to receive email updates indicating new legislation. I would like a monthly online newsletter, which contained links to relevant articles, legislation, case-law etc.

I would like case studies in NI to be linked to other jurisdictions e.g. be able to see how directive was implemented differently in Portugal, and what cases have arisen there. I would like a layman's guide to legislation - practical interpretation.

A computer system which operated like a flow-chart - i.e. taking me through layers of information at which point my query is resolved or I am advised to seek further legal advice. A computer system that contains a range of search facilities. A mapping system would be very relevant to Agriculture - particularly if linked to DARD intention to provide digitised maps - especially given ESA's, ASSI's etc. I would want to be able to print information as I see fit - i.e. whole/part of document.

In conclusion we suggest that the findings of the interviews present a reasonably complete view of how users view their user requirements and expectations. The interviews demonstrate that lawyers and non-lawyers alike require access to a wide range of primary, secondary and 'related' legal information.

Perhaps the materials suggest quite forcefully the problem with access to legal information: basic information is useful in a general sense in that it provides a context in which users can understand the law, but they want more than that: they want legal advice; they want information which they can put in the balance and decide how to act or how to move forward. The **I.J.L. & I.T. 273* future of the legal marketplace may well be based upon the raw data, but from the list of user requirements, what really seems to be desired is some form of editorial input to control and to make coherent the legal information which is being produced from an ever more complex legislative system. Such editorial added value must incorporate summarised judgements, interpretative guidance and up-date alerting facilities and may involve building communities on-line to disseminate and discuss information from particular points of view (closed, mediated lists for example).

7 Research Findings: Will the marketplace pay for added value?

Article 6 of the proposed directive stipulated that the provision of information was to be at cost plus 'reasonable return on investment':

Charging principles

Where charges are made, the total income from allowing access to or the re-use of these documents shall not exceed the cost of producing, reproducing and disseminating them, together with a reasonable return on investment. The burden of proving that charges are cost-oriented shall lie with the public sector body charging for the re-use of the document.

This proved controversial. It is arguable that public sector information is produced at public expense, so it is unfair of public bodies to impose conditions and charge royalties in respect of publicly funded information for which the public has already paid through the collection of taxes. Also, by making it freely available - increased usage could be encouraged, and new groups of users could potentially emerge. In contradistinction, Papapavlou argues that it is usually a small section of the public who wish to use a particular public sector information product and that the user should not be subsidised by the general public, rather the user should make some contribution towards the information production costs.⁴⁷ Likewise, Peterson argues that simply because a resource is obtained through expenditure of public funds, does not mean it is available for the use of any taxpayer at no cost.

None of us would think of walking into a government office to use a typewriter, simply because it was paid for with taxpayer's money.⁴⁸

***I.J.L. & I.T. 274** In the final Directive, these views appear to have won through and the text was finalised as:

Principles governing charging

Where charges are made, the total income from supplying and allowing re-use of documents shall not exceed the cost of collection, production, reproduction and dissemination, together with a reasonable return on investment. Charges should be cost-oriented over the appropriate accounting period and calculated in line with the accounting principles applicable to the public sector bodies involved.

Such divergence of opinion regarding appropriate pricing tariffs are evidenced by interviewee responses. It should be noted, though, that much relevant legal information will simply be raw data which is produced as part of the legal process itself, rather than more costly non-procedural, generated information (e.g. reports and analysis). For example, the passing of judgments to BAILII is not particularly expensive to the providers, and as the court system becomes more computerised, information which may be useful to add value to will also be easily available - information on cases lodged and claims being made. It is likely therefore that the cost of new information products will not be heavily loaded by the costs of the raw data. Much more likely is that the costs of the systems will be determined by the costs of the adding value process.

Group 1: Lawyers in Practice

All interviewees suggested that they had a budget for legal information provision and that it was either flexible or 'probably' flexible. The individuals who decided on what should be purchased were colleagues (and thus practitioners too). As to how much they may be prepared to pay, the general view was a 'reasonable fee' and that the measure of what was reasonable was dependant upon the facilities offered. One, from a large multi-partner practice, suggested that they had been offered access to a system which looked useful but was simply too expensive even for that large practice:

A 'reasonable' fee depending on facilities - if the system was comprehensive we would probably implement it. Consolidated versions of legislation would be an incentive, as it would give added value, and be an efficiency device. [One person] has contacted us re implementation of a know-how system which would allow the user through one keyword search to access all relevant internal documents and list all relevant internet sites - we have not implemented it since it would cost 100,000 (euros) p.a.

Another - from a smaller, yet still multi-practitioner practice - suggested that some sweeteners would help them look more favourably upon any system:

***I.J.L. & I.T. 275** A 'reasonable' fee depending on facilities. It would need to be more effective than our current systems, and represent value for money. Free period of usage would encourage familiarity with the system. A fixed flat rate fee would probably be most convenient payment method.

It is important to note that in our interview sample, we were not interviewing lawyers from small, one-or two-person practices. Our group represented something of a specialism, which could really only be found in larger practices. These practices tend to spend much more money on information resources and it should not be concluded that all lawyers would have a similar view. Certainly in past

research we have found that many smaller practices purchased a copy of a CD-ROM resource only every two or three years, considering that the law wouldn't have changed that much to require an annual update.

Group 2: Commercial Firms involved in Environmental/Planning Issues

The interviewees from this group either had a flexible budget for legal information or felt that it would be possible to purchase the information. The replies are informative from our three respondents and are outlined here:

Quarrying firm:

A 'reasonable' fee depending on facilities - we currently pay £225 p.a. for CEDREC. If the system improved interpretation of legal information and offered bullet point summaries of legislation, then we would probably implement it - we would like it to be available on our Intranet.

Waste firm:

A 'reasonable' fee depending on facilities - ideally we would like something tailored to our specific needs - if so, we would invest heavily.

Advisory Support to firms working in environmental field:

We're a charity, but if relevant, up-to-date, understandable and reliable Information were provided then we would be willing to pay a reasonable fee - as long as we could pass this information on to businesses that contact us. We would like a trial period to assess the usefulness of the system. We would expect a discounted rate for voluntary organisations. We would prefer a flat rate, fixed fee payment plan.

Which all show different attitudes to payment, and perhaps indicate that in order to calculate what each see as a 'reasonable fee' one must look at the turnover of the firm and the implications that environmental/planning issues have to profitability. Also, one of our respondents noted that they were really involved in quite a small area of legal information use and that they rely on a smallish subset of the total, and thus would not view themselves as wanting to pay large costs for access to a large system.

***I.J.L. & I.T. 276 Group 3: NGOs**

Only one of the individuals worked with an NGO where there was a set budget for legal information. This was an umbrella organisation which supported other NGOs and thus could be expected to see information provision as an important element of its budget. The other interviewees all suggested that there was no budget but they did suggest that purchase of information would not be completely impossible and that a decision could be taken by a senior member of the organisation to provide this. Most agreed with the notion of 'a reasonable fee depending on facilities' but of course this would imply - since most are not well-funded - a figure which is less than that of a commercial firm. One group suggested a fee of £1,000 pa for access for their staff (volunteers and local regional staff).

The general feeling on payment seemed to be towards a lower figure. A representative from large animal welfare charity suggested:

I think there should be discount for voluntary organisation. I also think that a 3-month trial period at a modest fee would be essential to allow us to assess our potential usage, before we would make a long-term financial commitment.

Another interviewee, a local wild animal society, suggested quite a low figure:

Not much more - but I would need to test the system and assess it's potential value before I would make a financial commitment. We pay £100 pa to Ordnance Survey for digital maps - perhaps we would use a system if it cost around this amount. I would anticipate that our usage of the system would be low-level, so we would probably prefer a pay per use payment method. We also feel that there should be a discount available to voluntary organisations.

The conclusion must be that while this group are amongst the heaviest users of legal information, they put a relatively low price on it. £100 p.a. is less than the cost of four Guardian newspapers per

week. Of course the number of such organisations appears to be high, and a system which complemented or replaced their use of interpersonal information sources may well increase their workload (through reducing the time spent educating/advising other NGOs).

Group 4: Government

The views in this group suggested that there was no set budget for information provision. There was a complaint that most departments - even policy departments - had no suitable library facilities, though some departments have collections of papers which might be relevant. The typical method of agreeing to buy in resources appears to be through lobbying senior management who may or may not have a legal back **I.J.L. & I.T. 277* ground. All interviewees suggested that if the system was useful, they would be prepared to pay a 'reasonable fee' for this and would lobby within their departments for this service to be allowed.

The feeling from the interview material generally, is that this is a group who are under-informed with respect to legal information (apart from one in particular - who has an academic background) and that they would be a target audience for a system which 'added value' in a coherent manner. There does appear to be funding available for information purchase, but that in order to access this funding, there needs to be clearly shown an advantage and utility in the information provided. One noted this would be particularly useful - and thus value for money - if this meant fewer expenses on solicitor's advice.

Group 5: The farming/advisory community

This group was equally divided between those who didn't know about their budget and those who did. Only one had an existing budget. All of them appeared to feel, though, that money could be made available if the system was useful enough and was seen to be value for money. The diverse views on method of payment are represented by:

Lecturer

I would lobby the department of introduce system at a reasonable fee if its usefulness were demonstrate. A flat fee per annum charge would probably be most effective.

Farming Press

A reasonable fee depending on usefulness of system. I think we should get a discounted payment rebate because we would attribute the source of information and generate publicity for the system. A per-per-view/print-out scheme would probably be the most suitable payment method.'

It remains to be seen whether NGOs and Farming /Advisory community will utilise such information as these interviewees appear to argue against allowing governments to sell information at greater than marginal costs.

In respect of private sector information providers, it is contended in concurrence with Pas that:

[due to] creativity and due to competition with the government - the resulting added value, will justify price differences. The private sector would no longer be able to merely resell basic information, but will have to finalise a semi-or quasi - finished product.⁴⁹

****I.J.L. & I.T. 278* 8 The Business Decision**

The information from these interviews is clear:

- There is a distinct problem concerning access to legal information in the required format;
- There is also a desire to have that access;
- But there is also a lack of clarity in just how it might be implemented.

From the point of view of academic legal research, this is interesting and worth further study. From the point of view of a business decision, it is problematic - and remember that the eContent programme is about commercial implementation. Would we - on the basis of what we know about the legal information marketplace from the above - make the commercial decision to spend, say, several hundred thousand pounds in developing a system? I suspect not.

The information we have gathered is interesting but is not complete. It requires the development of test systems and evaluation of these systems in a proper and full manner.⁵⁰ In particular we suggest that there are two primary elements which are relevant and which can be described by technology acceptance models. The idea of 'technology acceptance' is relatively long standing in the management information system literature, since the problem is well known that IT can:

improve white collar performance ... [b]ut performance gains are often obstructed by user's willingness to accept and use available systems. ... Because of the persistence and importance of this problem, explaining user acceptance has been a long-standing issue in MIS research.⁵¹

Davis was one of the earliest to suggest that the two most important elements which could be used to predict (and to develop) successful systems were that of perceived usefulness and ease of use. The first relates to how users see the potential system as being useful for their work. The second looks at how easy to use the systems are. Both are important. The latter is obviously so, since a difficult to use system will be abandoned by the white collar worker who usually has more control over their working environment than other workers. However, acceptance of the former is perhaps even more important since without a sense that the system is **I.J.L. & I.T. 279* potentially useful, there will be little encouragement to move to the stage of actually using it and learning how to use it.

Our feeling from the research above is that Davis is correct, There is a feeling that any system should be usable, but primarily that it should be useful in the first place. Unfortunately, there are really no clear and demanding signals coming from the interviewees about what it would take in their view to perceive of a system as potentially useful and worth investigating and using. What does come out of this is a sense that a computer based system should be providing *advice* rather than just data. However, we have been here before: in the 1980s when the attempt was made to produce systems which would give advice rather than spout law - the expert systems failure. While there are still some who see this as having been successful, in our view it was a programme which wasted enormous resources and never moved from the laboratory to the eventual user in any successful way.

9 Conclusion: A Potential Marketplace?

In conclusion, this part of the Add-Wijzer project demonstrates potential for an expanded market in legal information. Moreover, it is a truism to state that IT today plays a central role in the creation of knowledge and distribution of power among citizens. Thus the extent to which legal information can be useful and influential depends upon the relative ease of access to the technology in question and the way in which information is presented to serve specific uses. Indeed, as Granat posits

the trend toward disintermediation, client-centred service and self-help will continue to accelerate because of the power of information technology to enable access to the law in ways that a non-lawyer can comprehend and use effectively in a widening spectrum of situations and cases.⁵²

We suspect that the *proposed* Directive could have radically altered the landscape of information provision but that such a transformation is less compelling now in light of the final text. Further, in respect of legal publishers, it seems clear that the provision of raw legal information which has been the backbone of some providers is unlikely in future to produce many profitable returns. The raw information will be easily available through services such as BAILII which governments will utilise to service requests (presuming that departments will prefer to use low cost systems **I.J.L. & I.T. 280* rather than undertake provision of access themselves). Thus, for publishers the question must be, how might they add value to their systems?

To take the example of planning/environmental law, we can think of systems which link together information from central government and local government to provide a system which details a history of planning in any particular area together with allowable developments all tied together with map-based data. Thus details of planning consents already provided, planning appeals, individual applications, etc. can all be linked and information provided by a simply click on a web map. It is our contention that such on-line systems will become a useful means of informing the public and that facilitating access to data and constitutes a means of increasing public participation in the planning process. Evidence of the potential and actual benefits of on-line spatial decision-making systems in the UK have already been demonstrated through the Slaithwaite project conducted in 1999.⁵³ (The partner demonstrator in Add-Wijzer, too, demonstrates how 'legal' information can be usefully developed through map based interfaces.⁵⁴)

The Slaithwaite project identified a number of problems associated with the traditional methods of

public participation at planning meetings, including an atmosphere of confrontation, which can discourage participation by an often less vocal majority, causing public meetings to be dominated by individuals who may have extreme views. These views may not necessarily represent the wider view of local people. Also, planning meetings often tend to take place in evenings at specific times that can limit the numbers of people who are able to attend. Also the geographical location of public meetings can further restrict the possibility of representative attendance. Physical access to such meetings can cause problems for the disabled, the elderly and infirm as well as those who may be deaf.⁵⁵ To this we would add that many people do not participate when they feel that their opinions are not knowledgeable. They might feel that they lack the expertise to challenge officials, because they have not had an opportunity to consult documents and conduct in-depth research.

In contrast, there are many advantages to an Internet based approach. Access to the information about the issues being discussed is available from any location that has web access. The information is also available at any time of day thereby widening access and increasing opportunities for public participation. The use of email-lists, notice-boards, discussion lists etc would enable them to make comments and express their views in a **I.J.L. & I.T. 281* relatively anonymous and non-confrontational manner compared with the traditional method of standing up in front of a relative group of strangers.⁵⁶ In particular, it would increase opportunity for geographically dispersed populations such as farmers, whom we have identified as potential users if the expanded legal market, to participate in public participation processes.

Thus legal publishers are encouraged to provide novel and innovative tools to make use of public sector information. Their role is to emphasise the true publishing element of their task: that is adding value to information and making it more understandable/useful/cohesive - just the kind of tasks which the eContent programme is directed at.

That is not to say that the expansion of the legal market and re-use of government information is to be undertaken solely by investors in legal publishing companies. Rather, we contend that the advantages of commercialisation of public sector information must be sufficiently counterbalanced against the right of public access, otherwise a closing off of public sector information might result:

As long as the public sector recognises and fulfils its role to protect the diversity and equality of access, the private sector will be challenged to increase the quality and usefulness of government information and to further expand the previously untapped markets for such information.⁵⁷

Nevertheless, it seems that for some potential users the issue of cost is an obstacle, particularly in the voluntary sector. Further research might examine the cost issue to see whether the subscription costs, hardware costs or training expenses are the main obstacle.

Prof. Philip Leith, School of Law, Queen's University of Belfast, Belfast BT7 INN. E-mail: p.leith@qub.ac.uk

CCSR, Faculty of Social Sciences & Law, Crawford House, University of Manchester, Manchester, M13 9PL.

I.J.L. & I.T. 2004, 12(3), 247-281

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1. Directive 2003/98/EC of the European Parliament and of the Council on the re-use and commercial exploitation of Public Sector information.
 2. See <http://www.addwijzer.org/>
 3. The interviews were carried out in the later part of 2002 and early months of 2003. An earlier version of this paper was given at Bileta 2003. See 'Developing European Legal Information Markets Based on Government Information: First Findings from The Add-Wijzer Project', 18th Annual Conference, BILETA, Greenwich, 2003, London. Available On-line at www.bileta.ac.uk.
 4. See Davis F. D., 1989, 'Perceived usefulness, perceived ease of use, and user acceptance of information technology', in *MIS Quarterly*, 13(3), 319-340.
 5. We refer to the 'Information Society' in terms of the EU programme initiated in the mid-1990s.
 6. 'Copyright protection under this title is not available for any work of the United States Government, but the United States Government is not precluded from receiving and holding copyrights transferred to it by assignment' Copyright Act, §105.
 7. Art 2(4) Com(2002) 207.
 8. Pas, J. 'The Commercialization of Government Information and the Proposal for a Directive COM(2002) 207 by the European Commission', *E Law*, vol 9, No 4 (December 2002). Available online.
 9. For example, *Recommendations to the European Council Europe and the global information society* (Bangemann, 1994) Available

on-line. This is perhaps the report which initiated the EU's interest in the 'Information Society' programme.

10. See also the report prepared for the IS Directorate 'Commercial exploitation of Europe's public sector information', October 2000. Available on-line.
11. <http://www.hmso.gov.uk/copyright/licences/click-use-home.htm>
12. www.bailii.org
13. See H. Laddie *et al.* The modern law of copyright and designs, Butterworths, 2000.
14. <http://www.cordis.lu/econtent/home.html>
15. The target of such comments were in the UK situation Mead Data who owned LEXIS and who were seen to be primarily US-oriented, with a UK 'add-on' service which was not viewed as central to their concern. For a wider discussion of access to legal information see Leith P & Hoey A, *The Computerised Lawyer*, Springer Verlag, 1998. For some discussion of copyright in legal databases see Leith P, 'Owning Legal Information', *European Intellectual Property Review*, 2000.
16. See transcript of 'Free the Law' campaign meeting held at the Institute for Advanced Legal Studies, London, 8th Nov. 1999 Available on-line.
17. www.irishstatutebook.ie See also P. Leith, 'The Communication of Legislative Information in Ireland', a Report prepared for the Office of the Attorney General, Dublin. Published in *Journal of Legal Information Technology*, Vol. 2, No 2, 1997.
18. COM (1998) 585 Green Paper on Public Sector Information in the Information Society, Public Sector Information: A key Resource for Europe.
19. COM (2001) 607 Final, Communications From The Commission to the Council. The European Parliament, the Economic and Social Committee and The Committee of the Regions.
20. eContent web site at: www.cordis.lu/econtent
21. 'Commercial Exploitation of Europe's Public Sector Information' Pira International Ltd. Executive Report, September 2000, p. 6.
22. Papapavlou, G. (1999) 'Public Sector Information Initiatives in the European Union'. Available on-line.
23. Haque, A. (2003) 'Information technology, GIS and democratic values: Ethical implications for IT professionals in public service' *Ethics and Information Technology*, Vol. 5, p. 42 (GIS) Geographic Information Systems, can be defined as a method of map overlays. When several slices of information of one area are combined by putting one slice of information on top of the other, previously unseen or even unanticipated relationships are revealed.
24. Art 2 (3) - defines 'document' as any content whatever its medium (written on paper or stored in electronic form or as a sound, visual, or audio-visual recording) and any part thereof.
25. Love, J. 'Pricing Government Information' (1995) *Journal of Government Information*, Vol 22, No 5, pp 363-387.
26. Pas, J. (2002) 'The Commercialization of Government Information and the Proposal for a Directive COM(2002) 207 by the European Commission' *Mardoch University Electronic Journal of Law*, Volume 9 Number 4. Available On-line.
27. Papapavlou, G. (1999) Public Sector Information Initiatives in the European Union. Available On-line. Papapavlou is employed by the Commission. He authored the Green Paper on public sector information (Jan 1999).
28. Katz, S. L. & Plocher, D. (1989) 'Federal Information Policy Development: A Citizen's Perspective' in Mc Clure, C. R. *et al.* (ed) *United States Government Information Policies: Views and Perspectives*. Norwood, NJ. Ablex Publishing, pp. 121-122.
29. Caws-Elwitt, H. (1998) 'Copyright, Competition and Reselling Government Information: Impact on Dissemination' *Katharine Sharp Review*, Vol.7. p. 3. Available on-line.
30. Under Article 10 of the Proposed Directive (Prohibition of Exclusive Arrangements) the terms of the agreement would have to be made public. This does not appear in the Directive.
31. Article 11(2), of the Directive.
32. For example, see Leith, P. (2003) 'Confidentiality, Privacy and E-Government: clarifying the notion of 'public space' *Workshop on Teaching of e-Government: Legal, Economic and Technical Aspects*, Albaracin, Spain. Available on-line.
33. Add-Wijzer focuses upon the legal information marketplace, and it's collaborators include both academics (UK and Sweden), a legal publisher (Context Ltd, London), a web design company (framFab, Netherlands) and local government officials in South Holland province of the Netherlands. The project is looking at two different aspects of law -- access to traditional legal information, and also access to legal information which is linked directly to digital geographical information systems.
34. It also fitted in with our proposed attempts to look at map based legal information in the Netherlands which was another part of the demonstrator project. This will be detailed later as part of the project product.
35. Almost all face to face, one or two via telephone. The interviews were not taped, but followed a pre-prepared script., but the interviewer - McCullagh - was encouraged to deviate as required by good interview practice. Interviews took around 45 minutes/ one hour. A small number also took place outwith Northern Ireland and three of these were emailed responses to the script. Unfortunately, these latter replies were not particularly helpful. Most were carried out person to person, with some being over the telephone.
36. Berring, R. C, 'Terminal Awareness: Lexis and Westlaw Make Legal Research Easier, but They Also Raise Some Hard Questions'. 5 *California Lawyer* 15. November, 1985. Also see the same author's 'On Not Throwing Out the Baby: Planning the Future of Legal Information' 83 *California Law Review* 616-635 (1995).
37. Cohen, M., 'Research Habits of Lawyers', *Jurimetrics Journal*, June. (1969). See also Granat R. S. 'Report on the Delivery of Legal Services To People of Moderate Means through Technology', March 9, 1999, ABA Law Technology Management Section. Available Online.
38. Morison, J. & Leith, P. (1992) *The Barrister's World and the Nature of Law*, Open University Press, Milton Keynes.
39. Morison, J. & Leith, P. (1992) p. 100.
40. Webb, J. (1993) 'Legal Research and Information Systems: the impact of information retrieval systems on provincial legal practice' *Law, Computers and Artificial Intelligence* Vol 2 Issue No 3 pp. 203 -227. Other research, not totally related to information access, appears in Gottschalk, P. (2000). 'Use of IT in Law Firms as Enabler of Inter-Organisational Knowledge Networks'. *The Journal of Information, Law and Technology* (JILT), Vol. 1 and Singh. G. *et al.* (2002) 'An Empirical Study in the Use of IT by Small and Large Legal Firms in the UK',

The Journal of Information, Law and Technology (JILT) Vol. 1.

41. For example, senior representatives from the commercial firms have suggested this in discussion with one of the authors.
42. Leith, P & Hoey, A, [1998] *The Computerised Lawyer*: 2nd Revised Edn Springer-Verlag pp. 110-112.
43. Bruce, T. [2000] 'Public Legal Information: Focus and Future' *The Journal of Information, Law and Technology* (JILT) Issue 1.
44. Bruce, T. [2000] 'Public Legal Information: Focus and Future' *The Journal of Information, Law and Technology* (JILT) Issue 1.
45. They also provide information and limited legal advice to farmer members, provided that it does not cause a conflict of interest in respect of another farmer member, in which case they would advise both parties to seek independent legal advice.
46. See www.cedrec.com 'Since the original CEDREC product was launched back in 1994, our mission has been to deliver "Environmental Legislation Made Simple". We specialise in translating complex legal jargon into plain English so that you don't need to.'
47. Papapavlou, G. (1999) 'Public Sector Information Initiatives in the European Union' Available on-line.
48. Dando, L. P. (1993) 'A Case for the Commercialisation of Public Information' in Bamberger, W. & Sherwood Bryan, N. *Marketing Government Geographic Information: Issues and Guidelines URISA*: Washington, D.C. p.4.
49. Pas, J. (2002) 'The Commercialization of Government Information and the Proposal for a Directive COM(2002) 207 by the European Commission' *Murdoch University Electronic Journal of Law*, Volume 9 Number 4.
50. Almost every research system produced linking computing to legal applications has ended in a PhD or a book and/or a few articles but never any usability study which lets us know which parts of the system were successful and which parts failed (in terms of the goals). Computer science describes itself as a 'science' but is more properly seen as a hacking venture. We suggest that it needs to amend the methods of analysing its research output.
51. F. Davis, 'Perceived Usefulness, Perceived Ease of Use, and User Acceptance of Information Technology' *MIS Quarterly*. September 1989, 319.
52. Granat R. S. 'From Legal Services to Information Services' Available on-line at www.granat.com. 'The Granat Group is a web development and web services firm that specializes in creating 'automated legal solutions.' This clearly shows the current thinking of some in the commercial legal information sector.
53. Kingston, R., Carver, S., Evans, A. & Turton, I. (1999) 'A GIS for the Public: Enhancing Participation in Local Decision Making' Presented at GISRUUK'99. University of Southampton <http://www.geog.leeds.ac.uk/papers/99-7>
54. See 'Legal Atlas' at <http://www.addwijzer.org/>
55. Kingston, R., Carver, S., Evans, A. & Turton, I. (1999) p. 3.
56. Kingston, R., Carver, S., Evans, A. & Turton, I. (1999) p. 3.
57. Caws-Elwitt, H. (1998) 'Copyright, Competition and Reselling Government Information: Impact of Dissemination' *Katharine Sharp Review*, Vol. 7 p. 1.

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