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A Comprehensive Free Access Legal
Information System for Europe

Graham Greenleaf*

Ginevra Peruginelli[†]

*University of New South Wales, g.greenleaf@unsw.edu.au

[†]Institute of Theory and Techniques of Legal Information of National Research Council of Italy (ITTIG-CNR), ginevra.peruginelli@ittig.cnr.it

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A Comprehensive Free Access Legal Information System for Europe

Graham Greenleaf and Ginevra Peruginelli

Abstract

The rule of law is one of the constitutive, foundational values of the European Union. The rule of law and access to justice and, as a consequence, access to law related information, go hand in hand as necessary conditions for a working democracy.

Significant contributions to access to legal information have come from the “Free Access to Law Movement” (FALM), a loose affiliation of 40 members (often called ‘legal information institutes’ or LIIs) from countries across the world. Half of them collaborate in the operation of three portals for the searching of multi-LII databases: AsianLII (28 Asian jurisdictions); CommonLII (50 jurisdictions, members of the Commonwealth); and WorldLII (all databases from collaborating LIIs, over 1,000 databases). AustLII (Australasian Legal Information Institute) coordinates the operation of these three portals and runs them from its servers.

‘Free access to law’ is something of an enigmatic concept because it does not only mean ‘access free of charge to users’, although that is an essential element of it. The other key freedom involved is the freedom of LIIs to republish ‘public’ legal information (legislation, cases etc) in their own way, and the complementary obligation of governments to make the data available to them so that they can do so. The Montreal Declaration on Free Access to Law (2002) is the basis of collaboration between FALM members. This Declaration, and its elaboration (in terms of proposed obligations of States) made at an expert meeting called by the Hague Conference on Private International Law in 2008, is the basis of the proposals put forward in this paper.

There is as yet relatively little European legal content searchable through the LII

free access portals (except from the UK and Ireland). The European contribution to the cooperative effort to provide worldwide free access to law is as yet more limited than could be expected, given its significance in the development of the world's legal systems, and its technical sophistication.

This paper surveys the complexity of European law, both (a) the law of European supra-national institutions; and (b) European national law. It considers the existing websites that attempt to facilitate searching for legal information across multiple European jurisdictions, and concludes that only those that centralize the data they are searching seem to work well.

The paper then outlines the European Law Project, an initiative AustLII through the World Legal Information Institute (WorldLII), supported by the Australian Research Council, which aims to expand as far as possible the range of European legal information (legislation, treaties, cases, law reform materials and open legal scholarship) available through the WorldLII portal. The initial version is available on WorldLII. The potential for the creation of a European-operated, coordinated free-access platform (a 'EuroLII') is also discussed briefly.

A comprehensive free access legal information system for Europe

GRAHAM GREENLEAF AND GINEVRA PERUGINELLI*

1. ACCESS TO LEGAL INFORMATION AND THE RULE OF LAW

The rule of law is one of the constitutive, foundational values of the European Union. Embedded in its founding treaty, it was reinforced when the EU adopted the Charter of Fundamental Rights in 2000, and was strengthened still further when the Charter became legally binding with the entry into force of the Lisbon Treaty in 2009.

The concept of the rule of law refers to the existence of laws and rules governing how society should function. Parallel to this, access to justice concerns the ability of ordinary citizens to avail themselves of the instruments of the law, in a word the system of justice. Such accessibility can be measured by a number of benchmarks, including access to legal information that should be made widely available to citizens.

As one scholar says, “Access to justice is a matter of fundamental social policy. Having full access to the justice system defines an important aspect of legal citizenship. At the societal level, access to justice implies an important connection between justice policy and the broader public policy issue of social cohesion. Full access to justice for citizens implies that they will have a positive attachment to the justice

* Graham Greenleaf is Professor of Law & Information System, University of New South Wales and Co-Director, Australasian Legal Information Institute (AustLII), and lead author. Ginevra Peruginelli is Researcher at the Institute of Theory and Techniques of Legal Information of National Research Council of Italy (ITTIG-CNR) and Professor (contract) in legal informatics at the University of Perugia, and principal author of Parts 1-2 and 6. AustLII’s work on the European Law Project is supported by an Australian Research Council LIEF grant, and the assistance of the project’s Chief Investigators is acknowledged. G Greenleaf worked on this paper while the CommonLII Visiting Fellow at the Institute of Advanced Legal Studies, London. At AustLII, Philip Chung (Executive Director), Professor Andrew Mowbray (Co-Director) and Kent Soestano (Project Officer) develop the European Law Project, and Jill Matthews and Martin Backes have assisted in research.

system, expressed as respect for the rule of law and confidence in the justice system. This represents a form of attachment to the society through the central social institution of the justice system...”¹. Therefore, the rule of law and access to justice and, as a consequence, access to law related information go hand in hand as necessary conditions for a working democracy.

In particular, effective access to legal information concerns the ease with which citizens may obtain legal data coming from reliable law information sources. There are, however, specific problems affecting the availability of legal information. These concern the delay of legislative materials appearing in official publications, the lack of official status of online versions of legislation and of historical legislation, incomplete coverage of case law, poor indexing by courts of online case reports, risks of monopolization affecting cost and ownership of information², and often-prohibitive costs of access to all but the most wealthy users.

New technologies can play an important role in ensuring effective access to legal information by speeding up the process of publication and distribution while providing means of automatic or semi-automatic indexing. With digital technologies, there is some promise that the barriers between citizens and law-related information will be lessened, bringing law directly to the people. In fact, despite a number of factors acting as roadblocks or bottlenecks on the information highway, the Internet opens up great opportunities for governments and nonprofit organizations to make law-related materials available online for free, or at low cost³.

2. LEGAL INFORMATION INSTITUTES AND ‘FREE ACCESS’

Starting from 1990 the web has provided the key element required for

¹ Ab CURRIE, *Riding the third wave – Notes on the future of Access to Justice*. In: *Expanding Horizons: Rethinking Access to Justice in Canada*. Proceedings of a Symposium organized by the Department of Justice, 2000, p. 39: <www.justice.gc.ca/eng/pi/rs/reprap/2000/op00_2-po00_2/op00_2.pd

² Theodore J, TJADEN, *Access to Law-Related Information in Canada in the Digital Age*. Thesis for the degree of Master’s of Law, Faculty of Law, University of Toronto, 2005, p. 101-112

³ Ethan KATSH, *Law in a Digital World*. Oxford University Press, 1995

free public access to legal information: a low or no cost distribution mechanism. In many countries the first attempts to exploit the advantages of the web for providing legal information have come from the academic sector rather than government, and did so with an explicit ideology of free access provision.

In this context a group of organizations, known as “legal information institutes” or “LIIs” is working together for widespread free access to law. These institutions publish legal information from more than one source (not just “their own” information) for free access via the Internet and mutually collaborate both politically and technically through membership of the “Free Access to Law Movement” (FALM)⁴, a loose affiliation of 40 members from countries all over the world⁵.

The first Legal Information Institute was established in 1992 at Cornell University. This initiative, and use of the suffix ‘LII’, then spread in Australia (AustLII), Canada (CanLII), and many other countries and regions, including the UK (BAILII), the Pacific Islands (PacLII) and Southern Africa (SAFLII). Of the 40 members of FALM, half of them collaborate in the operation of three portals for the searching of multi-LII databases: AsianLII (28 Asian jurisdictions); CommonLII (50 jurisdictions, members of the Commonwealth); and WorldLII (all databases from collaborating LIIs, over 1,000 databases)⁶. AustLII coordinates the operation of these three portals and runs them from its servers.

3 THE ENIGMATIC CONCEPT ‘FREE ACCESS TO LAW’

The cornerstone that brings together the institutes of legal information is the Montreal Declaration⁷, drafted at the 4th Conference Law via the Internet held in Montreal in 2002. The Declaration focuses on three important points:

⁴ <http://www.fatlm.org>

⁵ Greenleaf G ‘Free access to legal information, LIIs, and the Free Access to Law Movement’, Chapter in Danner, R and Winterton, J (eds.) *LALL International Handbook of Legal Information Management*. Aldershot, Burlington VT: Ashgate, 2011

⁶ <http://www.asianlii.org>; <http://www.commonlii.org>; <http://www.worldlii.org>

⁷ <http://www.fatlm.org/declaration/>

1. Public legal information from all countries and international institutions is part of the common heritage of humanity. Maximising access to this information promotes justice and the rule of law.
2. Public legal information is digital common property and should be accessible to all on a non-profit basis and free of charge.
3. Organisations such as legal information institutes have the right to publish public legal information and government bodies that create or control that information should provide access to it so that it can be published by other parties⁸.

'Free access to law' is therefore something of an enigmatic concept because it does not only mean 'access free of charge to users', although that is an essential element of it. The other key freedom involved, as the third point above from the Declaration makes clear, is the freedom of LIIs to *republish* 'public' legal information (legislation, cases etc) in their own way, and the complementary obligation of governments to make the data available to them so that they can do so.

These are the two key elements of 'free access to law', but other elements of the full concept set out in the Declaration are that there should be no surveillance of usage for marketing purposes ('free from surveillance'), and that there should be no technical restrictions on LII users 'copying and pasting' or printing the data LIIs provide.

Since the Declaration in 2001 the most detailed discussion of the principles of free access to legal information took place at an expert meeting called by the Hague Conference on Private Law in 2008. A consensus was reached by the expert attendees in the form of 18 draft Principles on desirable conduct of States in relation to free access to legal information⁹ (as distinct from the assertion of LII and public rights in the Declaration). The Draft Principles are still being considered by the Hague Conference and have no official status, although we understand they will be developed further in 2012.

The draft Principles include 6 key principles that States should be encouraged to adopt, which may be briefly paraphrased as follows:

- (i) Ensuring free access (the one proposed obligation).;
- (ii) Ensuring that their 'main' legal materials are 'available for free

⁸ <http://www.fatlm.org/declaration/>

⁹ See Appendix to Greenleaf (2011), N4

access in electronic form by any persons' (including overseas). This includes whatever legal materials the State has from time-to-time.

(iii) Republication - to allow and facilitate others reproducing and re-using their legal materials, and to remove any impediments to such publication.

(iv) Integrity and authoritativeness - to make available authoritative electronic versions of their legal materials.

(v) To do whatever they can to ensure those who re-publish or re-use the authoritative legal materials can do so with the highest integrity possible and with clear indications of their origins and integrity.

(vi) To remove obstacles to recognition of these materials in their courts.

The final version adds that the right to republish needs to respect local privacy laws, and that redaction of cases (where such local laws require it) should be a responsibility of the State, not of the re-publisher.

State Parties are also encouraged by the Principles to do the following (again, in paraphrase): to preserve their legal materials, in order to make them available as necessary; to provide historical legal materials; to adopt neutral methods of citation of their legal materials - medium-neutral, provider-neutral and internationally consistent; where possible, to provide translations in other languages, and to allow them to be reproduced by other parties; to develop multi-lingual access capacities and to co-operate in doing so; to make any knowledge-based systems available for free public access and re-use; to use open standards for primary materials; and to provide metadata with primary materials.

Taken together, the Declaration and the draft Hague Principles provide a comprehensive view of the desirable qualities of 'free access to law', and inform the proposals in this paper.

4. MODELS FOR NETWORKING FREE ACCESS TO LAW

If we wish to build systems to assist users to find legal information that originates from more than one source (website), at least five models can be used to 'network' these different sources:

(1) Provide links from a central site to each of the sources (a catalog, index or directory), leaving the user to search each site separately if they choose to access it, using whatever search facilities the source provides;

(2) Send a search from a central site to each source, collect multiple sets of search results and then try to merge them on the central site, or just present them separately (the most radical usage of ‘federated search’);

(3) Send a web spider/robot to each site which allows web spider/robot indexing, create a central index of all content (periodically updated) which users can search and obtain a consolidated set of results, but take users back to the original sites to view results (all Internet-wide search engines from Alta Vista onwards, including Google use this model);

(4) Obtain regular replication / synchronisation of the content of all source sites on a periodic basis, by cooperation with the source site, but otherwise do the same as an Internet-wide search engine In (3). This model involves centralised searching, but decentralised display of results.

(5) Republish all the content of the source sites on a centralised site, after obtaining them by spidering or replication, so that users only search a concordance (search index) located on the central site, and from results go to pages on the central site. This is the extreme form of centralisation, complete republication.

The LII networks provided through WorldLII, CommonLII and AsianLII utilise a replication / synchronisation model (Model (5)) wherever possible¹⁰. A copy of all LII data is held on AustLII’s servers, replicated daily using rsync.¹¹ Searches over the locally stored concordances at AustLII producing rapid search results, and users are then returned to the databases on the originating LII when they choose to access a particular search result. Some LII content is also mirrored at other LIIs in the network. Because WorldLII, CommonLII and AsianLII all republish and maintain some databases of their own, they are a mixture of models 4 and 5 above.

The use of these approaches on the LII portals means that (i) speed of searches over the whole content from multiple LIIs is very fast; (ii) the search results from multiple LIIs can be ranked and displayed in various ways (by relevance, by date, by database); (iii) the collection of

¹⁰ Mowbray et al, 2007

¹¹ <http://samba.anu.edu.au/rsync/> (visited 1 March 2010)

data for searching also allows AustLII to mine the data for citations, and therefore create a free access multi-country citator for cases and legal scholarship (LawCite)¹², both for all collaborating LIIs, and all data republished centrally; and (iv) such citation information can be included in the search results for each case or article.

Only a few European institutions are yet members of FALM, namely ITTIG¹³ from Italy; BAILII¹⁴ and the Institute of Advanced Legal Studies Information Projects¹⁵ from UK; Droit.org¹⁶ from France; JiPS¹⁷ from Germany; IDT¹⁸ from Spain; CyLaw¹⁹ from Cyprus; IRLII²⁰ from Ireland; and Jersey Legal Information Board from Jersey²¹. Of these LIIs, BAILII (the British and Irish Legal Information Institute) is by far the largest provider of legal data in terms of quantity of data in its databases. ITTIG (the Institute of Theory and Techniques of Legal Information of the National Research Council of Italy) has for many years produced data bases of national and international significance and built specialized tools and software for searching of legal information on the web²²

There is therefore as yet relatively little European legal content searchable through the free access portals (except from the UK and Ireland). The European contribution to the cooperative effort to provide world-wide free access to law is as yet more limited than could be expected, given its significance in the development of the world's legal systems, and its technical sophistication.

¹² <http://www.lawcite.org/>

¹³ <http://www.ittig.cnr.it/>

¹⁴ <http://www.bailii.org/>

¹⁵ <http://ials.sas.ac.uk/>

¹⁶ <http://www.droit.org/>

¹⁷ <http://www.jura.uni-saarland.de/>

¹⁸ <http://idt.uab.es/>

¹⁹ <http://www.cylaw.org/>

²⁰ <http://www.irlii.org/>

²¹ <http://www.jerseylaw.je/>

²² Many ITTIG projects are summarised in Nannuci, R and Ragona, M 'Toward free access to law: Research experience and prospects' in G Peruginelli and M Ragano (Eds) *Free Access, Quality of Information, Effectiveness of Rights* (Proc. IX International Conference 'Law via the Internet'), European Press Academic Publishing, Florence, Italy, 2009, pgs 272-283

5. THE COMPLEXITY OF ACCESS TO EUROPEAN LAW

Effective access to European law requires access to two often-overlapping types of information: (a) the law of European supra-national institutions; and (b) European national law. Once the law of supra-national institutions is included, the scope of 'Europe' for the purpose must also be considered: at its broadest, it includes at least 53 jurisdictions²³ if it is to be broad enough to include the 49 members of the Council of Europe; Belarus and Kazakhstan as members of OSCE; Kosovo and Vatican City because of their geographic locations; and various dependent territories with autonomous legal systems (eg Jersey, Guernsey, Isle of Man, Gibraltar). A tabular representation of international organizations in Europe²⁴ lists 11 main European-specific institutions²⁵ plus at least 7 other international institutions which have particular importance in inter-European relations²⁶. Most of these institutions are based on numerous treaties and have institutions making legislation of various types. They often have courts or tribunals to adjudicate among their member states (or between member states and citizens) including major international courts such as the European

²³ Albania; Andorra; Armenia; Austria; Azerbaijan; Belarus; Belgium; Bosnia and Herzegovina; Bulgaria; Croatia; Cyprus; Czech Republic; Denmark; Estonia; Faroe Islands; Finland; France; Georgia; Germany; Gibraltar; Greece; Guernsey; Holy See (Vatican City); Hungary; Iceland; Ireland; Isle of Man; Italy; Jersey; Latvia; Liechtenstein; Lithuania; Luxembourg; Malta; Moldova; Monaco; Montenegro; Netherlands; Norway; Poland; Portugal; Romania; Russian Federation; San Marino; Serbia; Slovak Republic; Slovenia; Spain; Sweden; Switzerland; The former Yugoslav Republic of Macedonia; Turkey; Ukraine; United Kingdom

²⁴ Wikipedia 'International organisations in Europe' page at http://en.wikipedia.org/wiki/International_organisations_in_Europe

²⁵ Institutions and numbers of European members: [Council of Europe](#) (47); European Union (27); European Free Trade Area (EFTA) (4); Central European Free Trade Agreement (CEFTA) (7), Commonwealth of Independent States (CIS) (11); GUAM Organization for Democracy and Economic Development ([GUAM](#)) (4); [European Union Customs Union](#); Schengen Area; [Eurozone](#); [European Space Agency](#)

²⁶ Institutions and numbers of European members: Organization for Security and Cooperation in Europe (OSCE); North Atlantic Treaty Alliance (NATO); Eurasian Economic Community (EAEC or EurAsEC) (6); [International Criminal Court](#) (39); WTO; OECD (23); Collective Security Treaty Organisation ([CSTO](#) or Tashkent Treaty) (6)

Court of Human Rights and the various EU courts. In short, they generate a very large body of extremely complex law.

Researchers in European law may need to research the law of any one or more of the 53 European jurisdictions, for many reasons including as a study of national laws in themselves; for comparative law studies as influences on their own national law; or to understand how supra-national European law has been implemented at the national level. The sheer number of jurisdictions, coupled with very large amounts of legal data from some, generates a level of complexity not equalled in any other geographical region.

6. EUROPEAN FREE ACCESS INITIATIVES: POSITIVES AND NEGATIVES

In Europe, despite the considerable number of open access repositories to law (mainly provided by government institutions and universities), there are few examples of aggregation of such information sources.

First, considering the law of supra-national institutions, there is no portal which provides effective access to the law of all of the supra-national European institutions mentioned above, or to more than one of them. However, the best single-institution portals are very significant. In particular, EUR-Lex²⁷ provides all significant types of European Union legal documents (and in almost all European languages) and the Council of Europe website²⁸ contains all types of legal information interspersed with social, cultural and economic information (consequently making legal information sometimes difficult to find). Most other websites for European institutions have a similar mix of legal and non-legal materials. Research into law emanating from European institutions is therefore often a very difficult task for anyone other than specialists in such research.

Second, considering national law, there are many government-operated national legal information retrieval systems that offer legislation and/or case law. These include: a) for the UK: Legislation.gov.uk as the single official source for legislation as it is enacted or made²⁹; b) for

²⁷ EUR-Lex < <http://eur-lex.europa.eu/>>, subtitled 'Access to European Union law'

²⁸ Council of Europe website < <http://www.coe.int/>>

²⁹ All the information on legislation.gov.uk is available as open data under the terms of the Open Government Licence

Spain: Portal del Poder Judicial³⁰ and Tribunal Constitucional³¹ offering case law as well as Noticias Jurídicas³² providing free access to its own texts of the most important legislation as amended, and with hyperlinks; c) for France: LegiFrance³³ giving access to French legislation and case law; d) for Germany: Gesetze im Internet³⁴, a joint project of the Federal Ministry of Justice and the mainly commercial database provider Juris GmbH, offering free access to selected full-text federal legislation; Bundesverfassungsgericht³⁵ providing access to German Federal Constitutional Court's decisions and Bundesgerichtshof³⁶, the site of the Federal Court of Justice; e) for Italy: Normattiva³⁷ offering access to statutes as originally passed, as they currently stand, and as read in a specific year). Other notable European government systems which include both legislation and case law are FINLEX³⁸ (Finland), Jersey Legal Information Board³⁹ (Jersey), Albanian Official Publications Centre⁴⁰ (Albania) and BelgiumLex⁴¹. Many differences in free access national European systems are documented in papers edited by Peruginelli and Ragonab in 2009⁴² including those in relation to France (Cottin), Finland (Hietanen), Denmark (Koch), Italy (Lupo), Switzerland (Moret), and Austria (Schefbeck).

However, few European government-operated portals provide multi-jurisdictional access to such national legal information.

³⁰ <http://www.poderjudicial.es>

³¹ <http://www.tribunalconstitucional.es>

³² <http://noticias.juridicas.com>.

³³ <http://www.legifrance.gouv.fr/>

³⁴ <http://bundesrecht.juris.de/bundesrecht>

³⁵ <http://www.bverfg.de/entscheidungen.html>

³⁶ <http://www.bundesgerichtshof.de/>

³⁷ <http://www.normattiva.it/static/index.html>

³⁸ <http://www.finlex.fi/en/> (visited 1 March 2010)

³⁹ <http://www.jerseylaw.je/Home/WhatsNew/default.aspx> (visited 1 March 2010)

⁴⁰ <http://www.legjislacionishqiptar.gov.al/> (not available 1 March 2010)

⁴¹ <http://www.belgiumlex.be/V2/belgiumlex/website/en/> (visited 1 March 2010)

⁴² Peruginelli, G and Ragona, M *Law via the Internet: Free Access, Quality of Information, Effectiveness of Rights* (Proc. IX International Conference 'Law via the Internet'), European Press Academic Publishing, Florence, 2009

The European Commission's N-Lex,⁴³ is subtitled 'a common gateway to national law'. Launched in 2006, it now covers 24 official EU national legislation sites, and aims to include all EU countries. It is developed jointly by the EU publications office and EU governments. It is still labeled 'experimental' and 'a pilot project'. It aims to provide a similar search interface to each of 24 different systems, and assists with the translation of search terms from one language into another. However, it does not allow simultaneous searches of even two systems (so it is not a 'federated search' system), let alone 24, and therefore does not provide any capacity for merger of search results. If you want to search European national legislation, 24 searches are required, with 24 sets of results that cannot readily be compared. The European Forum of Official Gazettes covers more countries but has fewer functions.⁴⁴ A federated search engine, the Common Portal of National Case Law⁴⁵, has been operated by the Network of the Presidents of the European Supreme Courts since April 2007. Although it allows a user to select from 19 databases from 15 countries over which to search⁴⁶ it warns that searches may fail if over more than 5, and tests verify this. European-wide searching would therefore take at least four repetitions. It is also quite slow. It provides a federated search facility, and therefore cannot provide relevance ranking of merged search results. This facility works to some extent, but it is not likely to satisfy the needs of many legal researchers. However, it provides simultaneous translations of search queries into multiple languages, which is most impressive and a valuable model for this project. There are therefore no comprehensive and efficient portals for all European national law.

However, there are some other remarkable initiatives mainly concerning case law which provide a European-wide aggregation of certain specialized types of national case law, and in some cases the relevant law from supra-national institutions as well:

⁴³ http://eur-lex.europa.eu/n-lex/pays.html?lang=en&info_lang=en

⁴⁴ <http://circa.europa.eu/irc/opoce/ojf/info/data/prod/html/index.htm> - links to legislative databases in 29 European states but no common search interface, translations or merged search results.

⁴⁵ <http://www.reseau-presidents.eu/>

⁴⁶ Australia, Belgium, Cyprus, Germany, Estonia, Finland, France, Croatia, Lithuania, Malta, Netherlands, Portugal, Slovakia, Slovenia and United Kingdom. Liechtenstein, unlisted, is covered.

1) *Dec.Nat*⁴⁷ is provided by the Association of Councils of State and Supreme Administrative Jurisdictions of the European Union⁴⁸. It gives access to references to national decisions concerning Community law from 1959 up to the present day. The database contains: *a)* the national case law regarding European Union law; *b)* the national case law regarding European Union law; *b)* the reference to annotations and comments in books and articles related to national decisions and judgments delivered under the preliminary ruled procedure by the Court of Justice of the European Union concerning those matters. Summaries in English are provided.

2) *Jurifast* - Fast information system for case law⁴⁹, equally provided by the Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union, contains preliminary questions submitted to the European Court of Justice, the Court's answers, and the subsequent national decisions.

3) *CODICES*⁵⁰ is maintained by the European Commission for Democracy through Law (also known as Venice Commission)⁵¹. It reports on the case-law of constitutional courts and courts of equivalent jurisdiction - in Europe but also in other parts of the world - together with case-law of the European Court of Human Rights and the Court of Justice of the European Communities. Summaries in English are provided.

4) The *JURE* (Jurisdiction Recognition Enforcement) database⁵² is developed by the European Commission. It contains a number of cases of the European Court of Justice and the Member States' courts on the interpretation of Council Regulation (EC) no 44/2001 of 22 December 2000, on Jurisdiction and the Recognition and Enforcement of judgments in civil and commercial matters and on the interpretation of the 1968 Brussels Convention and the 1988 Lugano Convention. The

⁴⁷ http://www.juradmin.eu/en/jurisprudence/jurisprudence_en.lasso

⁴⁸ <http://www.juradmin.eu/>

⁴⁹ http://www.juradmin.eu/en/jurisprudence/jurifast/jurifast_en.php

⁵⁰ http://www.venice.coe.int/site/main/CODICES_E.asp

⁵¹ <http://www.venice.coe.int/>

⁵² http://ec.europa.eu/civiljustice/jure/search_en.cfm

decisions are in the original language, but the database offers summaries in English, French and German.

We can conclude that the efforts by European national governments and supra-national institutions, vary a great deal in effectiveness. One strength is translations offered (EurLex; CoE website; the specialised services) and translation facilities (n-Lex; Common Portal). However, there is one clear differentiating factor of effectiveness. The more effective systems (eg EurLex, CoE website, Dec.Nat, JURIFAST, CODICES, JURE) hold in a central location both all the data that is searched, and the files presented to the user in results. These are fully centralised systems (Model (5) above). The less effective systems use a 'federated' search system in the extreme form (eg N-Lex) (Model (2) above), or merely provide a directory of links (eg Forum of Official Gazettes) (Model (1) above). In both Models (1) and (2) no data is held centrally. There are intermediate positions between these two extremes. The projects advocated in this paper take an intermediate position between these two extremes, a hybrid of centralisation and decentralisation.

7. AVAILABILITY OF EUROPEAN DATA FOR FREE ACCESS PROJECTS

Most European countries do not claim copyright in any form of primary legal materials (legislation, cases etc), often including translations. They have generally adopted the option in the Berne Convention that allows no copyright in such materials. The most common copyright position in European states⁵³, shared by 32/37 States and territories surveyed⁵⁴, is that there is no copyright in any texts of a legislative, judicial or administrative nature. In at least 21 of those States the position for this project is even better as it is explicitly stated that there is no copyright in any official translations of those exempted materials, so any official translations into English or other languages may also be republished⁵⁵. In the other eleven, official translations may come

⁵³ Survey by AustLII of the copyright laws of 37 European states (including all major states), April 2010. The copyright position in the other states has not yet been determined.

⁵⁴ The 21 states in the next footnote, plus Austria; Belgium; Denmark; Finland; Germany; Greece; Hungary; Italy; Netherlands; Poland; and Turkey.

⁵⁵ Albania; Belarus; Bulgaria; Croatia; Czech Republic; Estonia; Latvia; Lithuania;

within the exempt materials, but this is a question of statutory interpretation. Only five of the 37 jurisdictions surveyed do assert some form of government copyright in such official materials (the UK, Ireland, Gibraltar, France and Malta), but the first four already allow their legislation and case law to be reproduced in free access LIIs which are part of the WorldLII network (BAILII and Droit.org), so copyright is still no practical impediment. In short, European copyright law and public policy is in general very helpful to the goals of free access to law projects. There are also few practical impediments to obtaining supply of the major sources of legislation and case law data from Europe. Almost all countries publish their legislation on the Internet for free access, so there are good prospects of obtaining access to that data. Where Courts and Tribunals publish case law, it is almost always anonymised (partly due to European privacy laws, but also due to a different tradition in relation to open justice), and so issues of identification will rarely cause problems. These official websites rarely use the Robot Exclusion Protocol to exclude others from copying data from their sites. The position with European multi-national institutions is much the same: they either give explicit permission for non-profit publication on their website, or (from our experience) readily do so when requested.

8. WORLDLII'S EUROPEAN LAW PROJECT

The European Law Project is an initiative of the Australasian Legal Information Institute (AustLII) through the World Legal Information Institute (WorldLII) which it operates in cooperation with around 20 other LIIs around the world. The project is funded by an Australian Research Council (ARC) research infrastructure development grant (LIEF grant) for 2011-12, aimed to assist Australian researchers in European law to find research resources more efficiently. Researchers from eight Australian Universities are involved in the project⁵⁶. Because of its funding basis, the European Law Project is putting an initial emphasis on including databases in English.

The aim of the European Law Project in WorldLII is to expand as far

Liechtenstein; Luxembourg; Norway; Portugal; Romania; Russian Federation; Serbia; Slovak Republic; Slovenia; Spain; Sweden; Switzerland; and Ukraine.

⁵⁶ Details are at <http://www.austlii.edu.au/austlii/research/2011/lief/>

as possible the range of European legal information (legislation, treaties, cases, law reform materials and open legal scholarship) available through the WorldLII portal. The initial version is available⁵⁷. As yet, the main sources of databases are as follows: the European Union; Council of Europe; decisions of international courts concerning European countries; the United Kingdom, and Ireland; plus smaller databases available from other countries including Albania, Azerbaijan, Bosnia, Cyprus, France, Italy, Malta, Poland, Romania, and Spain. The Project currently includes over 100,000 searchable items of legal content from European-wide institutions, over half a million searchable items of UK and Irish law (from BAILII), and some thousand from other countries. The result is to facilitate pan-European comparative searching of both multinational and national legal sources.

The next priorities are to add databases of legislation in English from as many European jurisdictions as possible (10 currently under development), followed by decisions from Constitutional courts, and decisions of national courts on matters of EU law (decisions from all countries are being added in both categories). The LawCite Citator should be particularly useful in tracking cases cited across jurisdictions. We will include European legal scholarship, treaties and other key materials where possible.

Despite the linguistic diversity of Europe the key factor that makes this project possible is that sufficient essential legal materials from almost all European countries and institutions are available in English. Many European countries now translate important national legislation into English (and often into no other language), and some translate all national legislation into English. Treaties are often available in English whether bilateral or multilateral. All EU and Council of Europe materials are available in English, and some European institutions with no English-speaking countries as members nevertheless translate legal materials into English. English is a principal language of international legal scholarship. For all these reasons, an emphasis on English therefore does not prevent development of a valuable comparative European law facility. It is a limited but useful first step.

We expect the primary audience for this Project to be researchers in

⁵⁷ <http://www.worldlii.org/int/special/europe/>

law and related disciplines, wherever located, who will find it useful to obtain, and compare, European legal materials in English. Legal practitioners, and law librarians servicing them, will (from previous experience) make up a significant part of this audience. So will the general public, who appreciate and benefit from well-organised legal materials available for free access.

The initial version of the Project also has an extensive Catalog of links to law-oriented websites from all European countries and pan-European institutions, and a 'Law on Google' search facility which assists researchers to find legal materials from any European country. The LawCite Citator, as part of the project, tracks citations of cases and journal articles within and across jurisdictions.

The European Law Project seeks collaborators from all European countries. Ideally, we seek to replicate data on the WorldLII servers for search efficiency purposes, with users finding the data via WorldLII but accessing it on the original source location. Where this is not possible, databases will be republished on WorldLII, and users will access it there. But this Project may be only the first step in a longer journey toward free access to law in Europe.

9. POTENTIAL AND PRINCIPLES FOR A EUROLII

From the preceding discussion we can conclude that there is a need for more effective free access to European-wide legal information. We believe that the time is ripe for the creation of a European-operated, coordinated free-access platform which is integrated to the highest International standards and distributed to the maximum extent consistent with high performance. It is now a realistic medium-term proposition to provide an alternative coordinated means of providing access to public legal information from across Europe which presents its content in ways which are as sophisticated as those of the global commercial legal publishers. To achieve this, it will be necessary for there to be formed alliances as broad as possible between those organisations within Europe who are capable both technically and ideologically of collaborating on such a project.

For the reasons developed throughout this paper, we consider that there are at least seven essential principles on which such a 'EuroLII' project must be based:

(1) All collaborating parties to a EuroLII must share a commitment by to free access to legal information in the sense discussed above.

(2) A EuroLII will primarily be a production system in the sense that its main aim is to provide an expansive (and expanding) range of databases of European law (national and supra-national), and to keep those databases as up-to-date as possible. A EuroLII will utilise the research on legal information systems techniques developed by research institutes in Europe and internationally, but it is primarily a production system for public use, and its own research functions are secondary. Its databases must be of 'real world' utility, not demonstrations.

(3) A EuroLII will aim to provide fast and efficient full text searching and ranking of retrieved documents, and will therefore centralise such data as is needed to achieve those aims. Subject to these core aims, it will be based where possible on a distributed network of actively collaborating data providers, and will return users to those data providers to view results found. Where this cannot be achieved it will provide centralised storage and presentation of data. Because of its core aims, it will not be based on 'federated searching' in the full sense of sending search queries to distributed hosts.

(4) In keeping with the Declaration on Free Access to Law, a EuroLII will utilise the freedom to republish legal texts which is provided by European copyright laws, and will not depend on consent or permissions from the providers of data. However, wherever possible, active cooperation with data providers will be achieved.

(5) A EuroLII will aim to provide all forms of public legal information, as full texts where possible: legislation; case law (the two most important); treaties; 'open' legal scholarship; and law reform.

(6) A EuroLII will aim to provide these legal texts in the original languages in which they are created, and in translations where available, so as to improve the comparative law value of the system.

(7) A EuroLII will seek multiple and diverse sources of funding and seek not to be reliant on a single source of funding. The collaborating parties need to adopt the attitude taken by some other LIIs that although individual funding sources for particular databases or projects come and go, the EuroLII portal will survive through both the lean and the fat years. From experience, putting individual databases in a broader portal also tends to help these databases survive after their specific funding

runs out.

ITTIG and AustLII have agreed to work together to explore whether there is a coalition of European partners who would be willing to work together to develop such a EuroLII. ITTIG will host an initial meeting in Florence in October 2011 to help gauge interest in such a project, and assess prospects for collaboration and for obtaining funding. If the development of a EuroLII proceeds, AustLII would like to see the databases it is developing for its European Law Project be absorbed in such a broader EuroLII, and to assist by provision of its open source software and technical assistance where that was desired by the European parties.

As discussed, the main limitation of WorldLII's European Law Project is its English-language priority, which limits its audience. The primary languages of legislation, case law and other legal sources in Europe are even more diverse than they are in Asia, with few languages (including English) being shared by more than a handful of the more than 50 European countries. Encouraging multilingualism is given a very high value within Europe. The key challenge for a EuroLII to be developed fully as a European wide comparative research facility is that it must at least aim to provide the automated translation of searches into multiple languages and thus retrieval from databases in multiple languages. Available tools for such a task include data from the Eurovoc Thesaurus⁵⁸, IATE⁵⁹, and the European thesauri project. Much research has already been done in Europe, and other tools are available⁶⁰.

⁵⁸ Downloadable from Eurovoc Thesaurus <<http://europa.eu/eurovoc/>> (Version 4.3)

⁵⁹ IATE (Inter-Active Terminology for Europe) <<http://iate.europa.eu>>

⁶⁰ Peruginelli, G 'Reflecting on cross-language retrieval of legal information as an essential component of open access' in G Peruginelli and M Ragano (Eds) *Free Access, Quality of Information, Effectiveness of Rights* (Proc. IX International Conference 'Law via the Internet'), European Press Academic Publishing, Florence, Italy, 2009, pgs 477-484