

# **AustLII's enterprise model: Constraints and opportunities in funding free access to law**

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## **Why this paper?**

- **AustLII funding crisis 2007**
  - 'necessity is the mother of invention'
- **LII's are free to use, but not free to build**
- **LII's have rarely been candid / introspective about their funding models**
  - The situation of every LII is different
  - But perhaps there will be some helpful ideas that other LIIs can draw from AustLII's experience
- **CAVEAT: These are my thoughts, not an official AustLII or UNSW position**



## Free access imposes constraints

- Every NGO free access provider to law operates within unique constraints
- But these factors are probably most common
  - Funding will always be limited
  - Funding will rarely be long-term
  - A high level of automation is desirable
  - High levels of editorial intervention are probably unsustainable long-term
  - Multiple sources of funding (and probably multiple funding models) increase independence

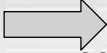


## AustLII's history

- Created 1995 by 2 law schools
  - Explicit mission of free access to Australian law
  - With support of the Council of Australian Law Deans
- Success creates sustainability problems
  - By 2007, over 270 databases (legislation, case law, law reform, treaties, law journals), expensive to maintain
  - Over 600,000 page accesses per day (20M+ /month) (similar to the other largest LIIs) requires substantial infrastructure
  - Requires budget of at least \$A1 million p/a (Aust \$1 = 0.5 euro)
- Q: Can a sustainable free access model support this?



## AustLII's funding history

- **Main sources, 1995-2006**
  - Original funding from academic grant (1995-6)
  - NSW Law Foundation funding (1996-2000)
  - Australian Research Council (ARC) 'research infrastructure' grants (2000-06)
- **Various additional 'contributors' (20+ courts, law firms and agencies) but only about \$150K**
- **No ARC grant in 2007** 
  - No alternative major source of funds could be found
  - AustLII had become dangerously exposed to a single source of failure



## AustLII's context

*What constraints does AustLII's environment impose on possible funding models?*

1. 'Core business': Mission constraints
2. Copyright constraints: 'Free access' is not open content
3. Living with Google: Web spiders and search engines



## 'Core business': Mission constraints

- **Universities**
  - High value on grants for research / infrastructure
  - Value reputational benefits of public service,
  - Very adverse to reputational and legal risks
  - NSW high focus on Asian engagement [international]
- **Faculties**
  - Similar values to Universities, particularly re grants
  - NSW high value on 'social justice' activities
- **AustLII**
  - Mission Statement explicitly one of 'free public access'



## Copyright constraints: 'Free access' is not open content

- 'Open content' = content anyone can reproduce
- Very little AustLII content is open content
- Australia still has © in cases and legislation (unlike most countries), for all 9 jurisdictions
  - Only 2/9 governments provide open content licences
  - AustLII's contracts with 3 governments only allow data to be provided by AustLII for free end-user access
  - Provision for free access only can be implied in other 4
- AustLII is constrained in 7/9 jurisdictions on what activities it can undertake with 'its' data



## Living with Google: Web spiders and search engines

- **Privacy constraints concerning case law**
  - Australian courts do not allow web spiders to access their cases; AustLII cannot do so either
  - Would also be fatal to AustLII's reputation
- **Dilemmas posed by Internet-wide search engines**
  - Allowing search engines to search other content (legislation, law journals etc) increases accesses: assists in demonstrating value to stakeholders (and is useful)
  - Do Google etc benefit from value-adding to source data (by ads) without paying for the value-adding?
  - Strategic decision at this stage to let web spiders into all non-case-law AustLII content



## Survey of benefits/risks in potential funding models

### More promising/ less risk

1. Donation funding from substantial users
2. Engagement with larger donors
3. Funding from data providers
4. Downstream delivery of users to other publishers
5. Provision of complementary services to commercial publishers
6. Facilitating services by commercial publishers
7. Contract development of other free access services
8. Research & infrastructure grants

### Unpromising /more risk

- Legal profession or government core funding
- Advertising models
- Denial of services to non-contributors
- Direct charges for access
- Charging for republication by 3rd parties
- Operation of closed data services
- Exclusive arrangements with third parties

**Approach:** Moderate conservative 'risk avoidance', particularly re reputational risks



## More promising funding activities

- **Donation funding from substantial AustLII users**
  - 2007 'crisis' approach resulted in **over 100 legal profession bodies** contributing from \$500 to \$50,000; 86 have contributed over \$260K in 2008 so far, most larger contributors renewing.
  - 26 **Law Schools** (plus UNSW & UTS) contribute over \$250K.
  - All **largest users** (eg large law firms; some businesses; other legal publishers) are being specifically asked to contribute.
  - **Governments** are also largest users: some agencies contribute (eg Tax Office) but no 'whole of government' funding
- **Engagement with larger donors**
  - Finding what new services, training or recognition larger donors value has not been done adequately
    - This is part of AustLII's 2009 strategy
  - Recognition of largest donors on front page is being considered



## More promising funding activities (2)

- **Funding from data providers**
  - 23 Courts and Tribunals and 12 government agencies that provide data have provided funding (24 in 2008 to date, providing \$265K)
- **Downstream delivery of users to other publishers**
  - 'Repeat this search over CCH content' provided past substantial funds
- **Linking of complementary content from commercial publishers**
  - Thomson legal publications have automated links to AustLII **legislation** where they do not publish their own (provides A\$50-\$100K per year)
  - AustLII holds **databases of cases** of many Courts and Tribunals the large commercial publishers do not publish, and which are not available anywhere else in electronic form - publishers could link to them
  - AustLII service to publishers is to **automate the linking**
  - Does not involve providing content to other publishers (© problems), only linking to content on AustLII



## More promising funding activities (3)

- **Facilitating services by commercial publishers**
  - Major legal publishers use AustLII as a source to find editorial content (eg cases they do not publish)
  - Smaller/niche legal publishers can provide links to their customers to primary materials (they do not publish any)
    - Current facility for Standards Australia (A\$30K p/a)
  - AustLII could automate customised complementary services (SDI) to advise other publishers of content they need to know
  - Potential major funding source in future, needs development
- **Contract development of other free access services**
  - AustLII has obtained some funding for assisting development of overseas LIIs (eg NZLII), but not yet for other Australian services
  - Availability of AustLII's Sino search engine as open source provides opportunities for funding via support services



## More promising funding activities (4)

- **Research & infrastructure grants**
  - Will continue to provide at least 30% of funding for AustLII's Australian service (95% for international) (for 2009 will be at least A\$450K)
  - Grants provide development of new/improved Australian services
    - Donations and other funding must provide maintenance, grants cannot
  - Main current grants:
    - Victorian Legal Services Board A\$850K (2009-11) for 'Victoria as the model jurisdiction for free access to law'
    - Australian Research Council (ARC) \$200K (2008-09) 'Australian Legal Scholarship Library' - 'research infrastructure' grant
    - ARC 'Linkage' research grant \$300K (2008-11) 'Improving case law'
  - UNSW & UTS contribute \$100K+ to ARC grant applications partly because of **benefits** competitive grants brings to the whole University
    - Other Universities are now also contributing from central funds
  - **Diversification** of the range of funds applied to, and number of applications each year, are the current priorities



## Unpromising/ higher risk models

- **Legal profession or government core funding**
  - One year of negotiations with few results as yet
  - Only some law societies contribute (\$110K 2007, less 2008)
    - One legal professional indemnity insurer provides \$50K p/a - alternative approach?
  - 'Whole of government' funding discussions continue
- **Advertising models**
  - Consultant (Dixon, 2008) says returns would be minimal
  - Other large legal publishers do not have advertising models
  - Costs of advertising brokerage would take a high % of fees
  - Loss of reputation and reduction in contributions would offset
- **Denial of access to non-contributing major users**
  - Risks to both data licences and reputation; also discriminatory
  - Alternative of making major users directly aware that their peers do contribute seems to be effective
  - Annual Report discloses categories, usage and contribution \$ of major identified users, but not their identities



## Unpromising/ higher risk models

- **Direct charges for access**
  - Impossible due to data licences in most jurisdictions
  - Forfeiture of reputation; loss of most contributions
- **Charging for republication by 3rd parties**
  - On-supply not allowed by most data licences
- **Operation of closed data services**
  - Paid 'value added' services are often suggested
  - Creates an inherent conflict of interests between what is free and what is 'value added' - free service will be degraded
  - Might conflict with some data licences
- **Exclusive arrangements with third parties**
  - Dangers to reputation and to University position
  - Better to provide same services to all legal publishers





## Results 2007-08

- **2007 (see Annual Report)**
  - Contributor funding was increased to nearly A\$1M
  - Number of contributors was tripled, a base for long-term stability
  - Minimal grant funding in 2007, but new 2008 grants obtained
- **2008 to date (see AustLII website)**
  - External Relations Manager only from July 08
  - Contributions to end October 08 approach 2007 level
  - Grant funding for 2008-11 gives a strong enough momentum
- **Still too uncertain for 2009 onwards**
  - A lot of contributor funding is used as 'industry partner' funds in research grants - unavailable for maintenance
  - Broader distribution of legal profession, government and business contributors needed for full stability



## Tentative conclusions

- **Maintenance of existing services is possible**
  - A combination of models 1-7 can probably produce sustainable funding of at least A\$1M p/a
  - Will have to keep growing funds as services expand
- **New/improved services are possible**
  - Grant funding (model 8) from academic and legal profession sources can provide 'project funds'
  - Some contributions are also 'start-up' funds
- **Benefits of a multi-funding-model ('hybrid') approach**
  - More stability; able to cope with loss of any stakeholder
  - More independence from wishes of any stakeholder
- **Bottom line is that AustLII will continue this approach**