

2005: BAILII: How and why it all started

On [October 26, 2015](#)[January 23, 2016](#) By [Henry Brooke](#) In [IT AND THE LAW](#)

In my recent blog "[BAILII: Five Questions Answered](#)" I gave technical answers to some of the criticisms that had been levelled at the way [BAILII](#) organised its website. In this complementary blog I explain in an article written 10 years ago how BAILII started and what we were trying to achieve from the very beginning.

We did not see ourselves being in competition with anybody, and if our presence in the marketplace encouraged the commercial suppliers to improve their products, that could only be to everyone's advantage. What was crucial to our mind was that everyone who had Internet Access should be able to read the case-law and statutes of these islands, at any rate from the time we started loading our database.

BAILII could not have happened but for the tenacious enthusiasm of Laurie West-Knights QC, and the technical genius of Professor Andrew Mowbray and his colleagues in AustLII (whom I visited on my only trip to Australia in 2003). We will always be in their debt. We also owe a very great deal to Joe Ury and Roger Burton-West, BAILII's two long-serving full-time members of staff, for whom the working of miracles (in collaboration with the astonishing BAILII software) is a daily feature of their lives.

I would also like to pay tribute to Robin Ap Cynan, who died very recently. He explained to us the needs of the Welsh, and he also represented the interests of solicitors on our Board with thoughtfulness and diligence for nearly 15 years.

Free Internet Access to UK and Irish Legal Materials

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I spoke about this topic to a tiny audience at the 2003 Commonwealth Law Conference at Melbourne. [\[1\]](#) I am grateful to the Editor for this opportunity of explaining to a much wider readership the way in which the drive to achieve free access to primary sources of UK and Irish law has blossomed since 1999. For those who wish to learn more, a visit to the BAILII site at www.bailii.org will furnish much more information than there is room for in a short article.

Ten years ago Professor Richard Susskind taught many of us about the opportunities that technology might open up for judges, lawyers, law students and the wider public. In 1996 he said that whereas we were then accessing information on the Internet via a slow modem as if we were drawing off mains water through a drinking straw, broadband technology would very soon enable us to substitute mains water pipes. And so it has proved, in the UK at least. I can now access all the case law and statutes I need within 15 seconds from my PC at home without any difficulty at all.

It was this vision of the future which first drew me towards the multi-disciplinary "Free the Law" movement. This movement came alive at a crowded meeting in London in November 1999 when we all agreed to do everything possible to achieve free public access to the statute law and the case law of our islands. Since then I have been chairman of the trustees of the British and Irish Legal Information Institute (BAILII) which is the outward and visible symbol of all we are trying to do. Last November 2004 we celebrated BAILII's fifth birthday at an event generously sponsored by the international law firm Baker & McKenzie, which was marked by generous plaudits from two distinguished speakers.

Ronan Keane, the recently retired chief justice of Ireland, said:

"... [I]t is indeed extraordinary, and in some ways, I suppose, redeems one's faith in human nature that a project can be so successful when driven by nothing but the dedication and commitment of the people concerned... BAILII has come to its great success over these five years in having a ... mission in life ... to make sure that legal information is accessible to everybody who needs legal information; be they judges, be they lawyers, be they persons engaged in the teaching or research of law, or be they the ordinary citizen who wants to and is entitled to find out what the law is on any given topic."

Carolyn Kirby, a former President of The Law Society of England and Wales, added:

“...[P]erhaps I should say at the outset, with my Law Society hat on, that BAILII is an enormous help to solicitors, particularly, of course, solicitors who do not have access, particularly on financial grounds, to the huge commercial websites which certainly small firms of solicitors, sole practitioners, people working from home and so forth, absolutely could not afford. And BAILII, therefore, is an enormous help to solicitors right across the board. Large firms like this, of course, benefit as well, but I think it is particularly the small firms who benefit the most.”

These tributes provide a clue to the reason why I have always been so enthusiastic about the need for free provision for primary sources of legal information. From the time I joined the English Court of Appeal in 1996, I was determined to establish a level playing-field in access to the law. Our great long-established universities have always had wonderful law libraries. So have the Inns of Court and the Advocates' Library in Edinburgh and our leading lawyers' offices in this island and their equivalents in Belfast and Dublin.

But what about the universities which started developing law faculties from 1960 onwards? What about the smaller lawyers' offices, particularly those away from big urban centres? What about the courts themselves, particularly the smaller courts, and the judges and magistrates and sheriffs who sit there? What about law centres and pro bono units and citizens' advice bureaux? And what about the countries of the Commonwealth, with all the possibilities the Internet offers them for accessing UK law texts without the heavy payments associated with printed material or commercial online subscription services?[\[2\]](#) And why stop at the Commonwealth, when the whole world can access the Internet?[\[3\]](#)

The world I watched developing in the 1990s was a world in which the gap between the haves and the have-nots was widening. As the courts provided more and more of their judgments in written form, the lawyers involved in the cases had the precious transcripts photocopied or scanned onto their firm's or their chambers' or their offices' electronic databases, available only to a comparatively small circle. Electronic publishers got hold of these unpublished court transcripts and created subscription services for the customers who could afford to pay for them. Unless there was a brief summary in a newspaper law report, the rest of the market was left to wait for the report eventually to be published in one of the series of law reports to which they had access. Often they had to wait a long time.

More and more specialist law report series were also being created, and there was a limit to the number of law reports most people practising or studying or teaching the law could afford. It seemed to me that intelligent use of IT could do a lot to make the law available to everyone who had Internet access, and save them the heavy expense of keeping a law library up to date, if what they needed, as a minimum, was the raw texts of case law and statutes, supported by an adequate search engine.

I have mentioned the meeting five years ago. Professor Graham Greenleaf of AustLII was the main speaker. There were people there from government and the judiciary, from both sides of the legal profession, from the academic world and the world of legal publishing, from the worlds of law librarians, consumer associations and advice centres. They came not only from England and Wales and Scotland, but from Northern Ireland, Ireland and the Channel Isles, too.

The mood of the meeting was unanimous. We all wanted to see in our islands the creation of an electronic legal information service like the one Professor Greenleaf had showed us, giving access to our primary sources of law, both statute and case-law, free at the point of delivery. A hundred thousand pounds was raised before Christmas to enable work to start quickly, without things getting tangled up in red tape and committees. We then formed a small steering committee to examine what could be done to make this dream into a reality.

In the meantime a pilot website was launched in Australia. This was almost entirely due to the efforts of the directors of AustLII. Andrew Mowbray built the databases, Philip Chung developed the interface and Graham Greenleaf generally encouraged and negotiated BAILII's development. They created a pilot site which included a lot of primary source materials that became accessible to everyone free of charge and free of copyright restrictions.

BAILII swiftly became the single largest free access law site for the UK and Ireland. It obtained 14,000 hits on its first day: it now averages 47,000 successful requests each day. Site watchers in early April

2000 saw the volume of English case law multiply more than a hundredfold overnight. This occurred when the official shorthand writers generously made available free of charge to BAILII three years' worth of their archive of transcripts from the two divisions of the Court of Appeal and the Crown Office List. [\[4\]](#)

BAILII became a registered charitable trust in December 2000, and in February 2001 the first three trustees, Lord Saville, Laurie West-Knights QC and I had our first trustees' meeting. In June, for our third meeting, we were joined by five other trustees, including one each from Scotland, Northern Ireland, Ireland and Australia. The following month we appointed our executive director, Joe Ury, and found our London home at the Institute of Advanced Legal Studies in Russell Square. We were able to create a small website for "new cases" in London, but the database remained in Sydney, by courtesy of AustLII, until September 2002.

Since then Roger Burton-West, who joined the BAILII team in July 2002, has controlled the database from the London end, and we also employ a very able part-time project officer who helps in the burgeoning work of loading the cases and tidying up the site. In addition, there is a source of very valuable inputs at the University of Cork.

At present BAILII loads onto its site all the case law and statute law it can get its hands on free of charge. We now have on the site the vast majority of the substantive judgments of the Civil Division of the Court of Appeal going back to May 1996: there are now over 12,500 such judgments on BAILII. There is also a large collection of High Court judgments and judgments of the Court of Appeal's Criminal Division. Since January 2003 we have been loading all the substantive judgments of the Administrative Court and the Civil Division of the Court of Appeal as soon as they are released. Privy Council and House of Lords judgments go back to 1996. For Scotland, Northern Ireland and Ireland the case law usually goes back to 1998 or 1999. In Ireland Supreme Court decisions go back to 1999 and High Court decisions to 1996. Hypertext links provide instant access from a cited case to the full text of the judgment if it is also on the BAILII site, provided that the correct citation is used.

Over the last two years we have also been greatly increasing our coverage of tribunal and other non-court rulings. Determinations of the Employment Appeal Tribunal, for instance go back to 1989, Irish Information Commissioner's decisions to 1998, and Irish Competition Authority decisions to 1991. At least 14 different tribunals within the United Kingdom are now represented.

BAILII's database of statute law follows much the same pattern, although UK statutes go back to 1988, Irish statutory material to 1922, and Northern Ireland statutes to 1495! The current publications of three of our law reform commissions now appear regularly.

We would like to be able to publish far more judgments from the higher courts in each of our jurisdictions on the day they are made available. But this is not the limit of our dreams, if only we had the money. We believe passionately in the need to create a level playing field for access to all, free of charge, to our case law and statutes and other publicly available legal materials. We need to have a larger coverage of significant case law, and European materials, going back earlier than 1996. A new national Tribunals Service is also being formed, and it would make a huge difference to those who provide advice on housing or social security benefits, asylum, tax or employment law, if they could be sure they could find the latest judgments from the higher courts, the Administrative Court and the leading appeal tribunals on the BAILII site. Very soon we will embark on a major new project which should enable us to add important case law dating back before 1996.

For funding, we now receive some financial help from Her Majesty's Court Service, for which we are very grateful, but as a matter of policy we have always been keen to spread our funding sources widely and not be over-dependent on public sources of funds or the generosity of a few big private donors. The Inns of Court and the Bar Council have always been generous supporters, and the Law Societies of our different jurisdictions have also been consistently helpful, as have the law faculties of a few of our leading universities. [\[5\]](#)

The one thing that is certain is that we must never again allow private interests to obtain copyright entitlement over the publication of our judgments. Commercial publishers play a very important role in developing more sophisticated electronic services for those who can afford to pay for them, but the publication of the raw text is a public asset which should be available to all alike.

BAILII does not operate in a vacuum. Professor Greenleaf has recently explained how over the last five years an international "free access to law movement" has emerged, based around independent, often University-based, Legal Information Institutes (LIIs) [6]. At their annual meeting in 2003 these LIIs agreed on a [Declaration of Free Access to the Law](#) which includes the proposition that "public legal information [7] from all countries and international institutions is part of the common heritage of humanity". An ambitious all-embracing site called WorldLII provides a single point of entry to this treasure-house, which is growing in volume every year.

This, then is the BAILII story - so far. I have some final observations from a judicial perspective. The good side of all this is that we are creating a level playing field, and those of us who are interpreting the law in the higher courts are being supplied with up to date copies of unreported judgments relevant to the points we are deciding. If we are confronted by a litigant in person on one side and an incompetent lawyer on the other, we are still able to access the law we need without too much difficulty. This was particularly valuable in the early days of the Human Rights Act, when we had so much to learn from each other. The law would have been in chaos if our early decisions were being made in ignorance of what another court had been saying on the same point.

Another great blessing of modern technology is that when we post an important judgment on a website at the time we are handing it down in court, we know that it will then be communicated electronically throughout the country - indeed, throughout the world - the same day to everyone who has a "need to know", and this does not only mean lawyers. I was recently struck by the fact that when a recent judgment of mine attracted national publicity, it was immediately evident to me which of the many media commentators had read the whole of the judgment, which was published the same morning on the BAILII site, and which were content to comment on a potted summary which could not hope to do full justice to the reasoning.

The bad side is that we often suffer from information overload. Cases are cited to us which decide no new point of law, and which merely illustrate the application of familiar law to a new set of facts. We have published a practice direction to try and bring things under some sort of control, but very often lawyers can't recognise a principle of law when they see one. We are sometimes overloaded with citations of cases which frequently don't help us in the task we have got to do, but which just add to the paper we have to read. This, too, is a problem with which we must continue to struggle, but we are quite sure that the solution to it does not lie in a return to the bad old days when important unreported judgments were available only to the few. Instead, the principal judgments of the courts of England and Wales, of Scotland and Northern Ireland, and Ireland, too, are now freely available to the world on a single site, usually on the day they are released.

[1] Under the title "*Publishing the Courts: Judgments and Public Information on the Internet*".

[2] On two recent occasions I have made successful representations to the Registrar of the Judicial Committee of the Privy Council, when changes to the way in which judgments were reproduced on that site made it very difficult for judges and lawyers in Caribbean countries to access important judgments, and to cite the texts in their judgments and opinions.

[3] Recently a lawyer in the Ukraine drew our attention to an error in a Chancery judgment. When I told the judge, he was grateful and authorised the necessary correction to the text.

[4] Now known as the Administrative Court.

[5] [A list of BAILII's sponsors is on the site](#). The trustees need to raise about £100,000 each year for core funding, and they are always keen to attract additional funding by which they may increase the value of the site. [Note: This figure is much larger now]

[6] In addition to BAILII, the LIIs include the Legal Information Institute ([LII Cornell](#), 1992) for US federal law, the Australasian Legal Information Institute ([AustLII](#), 1995), the Canadian Legal Information Institute ([CanLII](#), 2000), the Pacific Islands Legal Information Institute ([PacLII](#), 2001) covering fourteen island countries of the Pacific, the Hong Kong Legal Information Institute ([HKLII](#), 2002), the Irish Legal Information Initiative ([IRLII](#), 2001), the Southern African Legal Information Institute ([SAFLII](#), 2003) for South Africa (and potentially other regional countries), and the New Zealand Legal Information Institute ([NZLII](#), 2004).

[7] “Public legal information” has been defined as describing legal information produced under some duty to produce it: primary legal materials (legislation, case-law, treaties etc) and some secondary materials (law reform reports, travaux préparatoires, investigative commission reports, and perhaps some publicly funded academic legal research).