Equal Access to Online Legal Information through Democratisation of Technology: A Myth?

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Abstract. Wider access or "democratisation" of technology emerges as one of the most powerful force of change in the way we think, learn, exchange information and knowledge, and most importantly, in inspiring new ways to effect social change. In this paper, I will discuss that the advancements and emerging efficiencies in AI and technology has not democratised access to legal information. I argue that the innovation in technology has primarily been driven by private sector, to the detriment of the community at large.

Keywords: Innovation, emerging technology, legal publishing, equal access, open access to information, open access to technology, community-based outcomes.

1 Introduction

A normative, rational dialogue on democracy typically begins with Rousseau's definition that the state represents the will of the people through commonly agreed instruments and procedures. Terms such as "popularly elected" government, representatives, and "social contract" spring to mind (Rosseau 1767). In a simpler world then, if one posits that the developments in artificial intelligence and emerging technology serves to enhance exchange of information and ideas, break down geographical barriers and improve the human condition in general, then the reasonable (if not sanguine) assumption is then that a well-connected citizen can easily access and connect with information which enables the citizen to access public and legal information.

For this paper, I will discuss how access to the Internet does not necessarily mean equal access to justice, in the context of legal information; that the benefits from AI/technology innovation has been consistently usurped by market interests. I conclude with identifying that the cooperation and collaboration between private-public forces as the way forward in re-imagining equal access to the Internet *and* justice-related content.[1]

[1] I will be referring to artificial intelligence and technology inter-changeably. In this cluster, I am not differentiating between automation, process creation, big data mining, data analytics

2 Context and a *Reasonable Person's* Self-litigating Journey

Let me start this discussion with a context. In Australia, a person's most common pathway to justice is when law or regulation is being observed, as exemplified as applying for a passport or paying a speeding ticket, or even more mundane activities like getting married or registering a land title.[2]

I would like the reader to consider the following scenario:[3] you are enjoying a quiet picnic alone in the NSW bush land. Whilst enjoying your book, you hear a rustle ahead of you. You spot a fox pup, which seemed to be in distress. You sit and observe: not knowing what to do, for an excruciatingly long time. You tell yourself that you would wait for the pup's mother to arrive and you would leave when she does. That moment never arrives. The pup seems to be limping towards you and making horrible noises. You make the decision to take it to the nearest police station to seek help. You and your new companion, now warmly swaddled in your shirt in the passenger seat, are racing down the highway to the nearest police station. You are being guided by Google Maps, from the iPhone resting on your lap. A patrol car appears behind you, with sirens blaring.

You both stop at the shoulder of this highway. The police officer asks, "Do you know how fast you are going?" You nervously answer that you are speeding as you have an injured fox pup in your vehicle. By saying this, you have just admitted breaking the law. The police officer notices the iPhone on your lap and that you are shirtless, both of which are summary offences. He then proceeds to inform that you are knowingly transporting a game animal without a permit in your vehicle. [4] In a short span of time, you have just broken four different laws. The police officer, being the enforcer of black-letter law, issues you four tickets. One week later, you receive a Court Appearance Notice tor a CAN, to answer for your alleged "crimes". Until this moment, you have never broken any laws or even considered breaking any laws. The most mundane infraction you have ever committed is jaywalking in the city, which also happens to be a summary offence in NSW.

You decide to self-represent yourself in Court. After all, you did not knowingly broken any laws, you did not hurt anyone and no property was stolen. You are a victim of circumstances. You are confident that the officer of the Court would consider this matter with discretion. But to answer the charges in Court, you will have to form a plea or counter-claim against the summons from the State. Whilst you have not broken any aspects of private law, you have breached four separate public laws; laws,

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and so forth. I will be using the over-arching concept of artificial intelligence and emerging technology as a development in the field of computer science, created by humans to effect efficiency, intelligent collaboration and waste reduction.

[2] S7 of the Australian Passport Act 2005 (Cth), Part 5.2 of the Road Transport Act 2013 (NSW), Real Property Act 1900 (NSW) and Marriage Act 1961 (Cth).

[3] Some of the material facts of the case are derived from a matter dismissed by the presiding district court judge in Sydney on 6 September 2016.

[4] Rule 300 of Australian Road Rules 1999 (Cth), Part 5.2 of the Road Transport Act 2013 (NSW), s5 of the Summary Offences Act 1988 (NSW) and s3 of the Rural Lands Protection Act 1998 (NSW).

which universally apply to every single person in NSW. As almost all government information is available online combined with a plethora of free material in the Internet, you are certain that you would be able to build your own argument. After all, you live in a free, democratic society with unfettered access to information.

As a non-legally trained individual, you invariably commence to locate court forms and procedures from the Court website and other non-profit sites which offer such templates. You perform searches[5] in Google to find out about your numerous offences. Thanks to Google's predictive text searching and pattern recognitions, you are able to locate what actual laws have been breached. You may even locate the legislative instruments and regulations, which detail the laws you have allegedly broken.[6] Your persistence and a stroke of luck may even direct you to types of remedies you are entitled to. Armed with this knowledge, you might like to find out if there are any cases in NSW or in wider Australia, which resemble your situation so as to assist in the building of your argument. Your searches, again operating with newspaper articles, opinion pieces, newsletters from law firms which specialize in traffic offences, and plenty more. There is a plethora of information: all of which seems to offer conflicting information. All that information, free and available: the dilemma is, which lot of information is credible and authorised for your day in court?

Suppose then, that this exact scenario is presented to a legal practitioner. This practitioner will review the legal issues and commence research to identify the rights of the clients and possible remedies. The research typically commences with Google, followed by any number of wikis, blogs, metasites and sites created by private and government entities. The practitioner, may even consult a specialist site and do research in a paid legal research platform like LexisNexis to locate commentaries.

Although we have the same scenario and juxtapose circumstance, the objective of this imagined journey is to understand this: how does an ordinary person access the legal information, which a person is entitled to in an open society? In simpler, terms, how does an ordinary person gain access to the justice system? And the question pertinent to this discussion is this: if technology is supposed to increase access to information, how is it the person in the first example above being disadvantaged?

3 The Internet and Accessing Legal Information Online: Themes

The examples illustrated in the previous section is not meant to trivialise the legal education and training that law students, and indeed legal practitioners who undertake years of studies to achieve their standing. Rather, it is a critique that the rule of law in its purest sense, does not seem to be served by the leaps in AI/ emerging technology. This observation is not unique to Australian. The fastest way in which any citizen would access "law" or the written word of law is to go online and search for infor-

[5] Free test searches which typically contain the queries or and not limited to "is it .." or "what is …" or "how is .."

[6] See www.legislation.nsw.gov.au

mation. In Australia, the state has been not only been providing and maintaining information for public consumption, but also by observing appropriate Creative Commons arrangement, thus enabling private citizens to reproduce and republish the information. To the best of its capacity, the Australian government (local, state and Federal levels) have attempted to meet its social contract with the community. However, the community stands to lose when the state is not pro-active and pragmatic in creating and maintaining tangible community outcomes when it comes to republication and reproduction of legal information: outcomes which include innovative consumption methods, value-added 'next-gen' apps and tools that would greatly enhance the experience in accessing legal information.

Azyndar *et al.* (2015:285) highlight that emerging online "next-gen" tools not only improves digital literacy, but it paves the way to the greater debate on how legal information can be ethically used and shared. They believe that the changing landscape of the legal publishing industry and indeed the legal profession in the US shows growing reception to smaller legal publishers: agile legal technology start-ups, adding value to public information and making value-added content available at affordable pricing models. Examples of such start-ups or 'disruptive legal technology' players in the US include Ravel Law,[7] Casetext and FastCase.[8] Azyndar *et al*. (2015) argue that the disruptors' entry into the legal publishing market pose significant changes in the legal profession itself: in the manner in which legal content is exposed to students to the evolution of new consumption and research patterns within the profession. More so, Azyndar et al. argue that the disruptors' involvement in the legal publishing market will pave the way towards a more equitable and affordable access model for the community at large.

The proposition that disruptive technology democratises the legal profession is also put forward by Yoon (2016). His article argues that emerging technology in access to legal information provides dual benefits: on one hand, it promotes greater access to legal information for ordinary citizens. On the other, enhancements in technology mean that lawyers can now discard the old economic model of practicing law, and begin to serve the rule of law in a more transparent, less routinized manner. In Yoon's

[7] Ravel Law was purchased by LexisNexis on 10 June 2017: a sale rumoured to be in the vicinity of U$20 million. See Venture backed Ravel Law sells to Lexis Nexis" in https://techcrunch.com/2017/06/10/venture-backed-ravel-law-sells-to-lexisnexis/, published 10 June 2017, accessed 12 July 2017

[8] Ravel Law (www.ravellaw.com) was founded by two law graduates from Stanford Law School in 2012, was one of the first, affordable legal content provider which models provides data analytics for the profession. CaseText (www.casetext.com) on the other hand, is case and legislation look-up service, founded by a litigator who found the legal publishing paradigm unaffordable and old-fashioned. CaseText received crowd funding from the legal community and raised U$7 million in 2015(see https://techcrunch.com/2015/02/03/legal-tech-startup-casetext-raises-7-million-series-a-round-led-by-union-square-ventures/). FastCase (www.fastcase.com) was founded in 2008 by a solicitor who found the cost to access legal materials prohibitive. All three legal techs, as they identify themselves offer free-to-air information available to members of public and an affordable pricing structure to encourage access to justice.

words, the legal profession returns to one, which serves the rule of law and the ideals of justice, and is no longer a luxury reserved for the wealthy (Yoon 2016: 66).

The self-litigating context that I laid out above, combined with Azyndar *et al.* and Yoon's propositions, reveal three themes that encapsulate the theme of this paper. Firstly, generally speaking, access to the Internet is affordable and has become increasingly easier. With Google as the first port of call, an ordinary citizen can pretty much conduct some form of legal research. There is no challenge or issue in entering the Internet in a liberal democratic country such as Australia (Cann 1989: 1168). Secondly, emerging technology and ease in which sites can be created means that whilst there is no shortage of legal information, forms, opinions, and blogs, there is no way to ascertain the currency and credibility of the sites. The Internet remains an unregulated sphere, powered by private interests and the adage that "In the web, no one knows you are a dog" rings true for the parties who consume, and the parties who produce or reproduce content (Christopherson 2007: 3038-56). And finally, which is corollary of the second point, that meaningful and useful information is often trapped behind an unaffordable pay wall. This highlights the dilemma: for all the easy and fast access to technology and information --- open access to legal information specifically, remains a myth. I will expand on these three points in the following sections.

4 Access to Internet and Unequal Access to Content

The normative argument reads that ubiquitous connectivity fosters faster exchange of ideas and easier access to information. And in turn, that the advancements as experienced in the Internet should lead to easier access to justice-related content. Various writers have argued that the reality remains that there is unequal access to the Internet and therefore, unequal access to content, meaningful content that is.

This view is argued by Cedar-Silva (2013: 17) when he posits that the Internet is a contradiction in praxis: on one hand, the advances and plurality of technology enables ease of entry to the Internet, on the other, the advancements have meant that private interests are gaining efficiency in finding newer, creative ways to monetise and even create higher barriers to access. This contradiction reflects the sentiment of Vin Cerf (2012) who maintains that the Internet is an enabler of rights, may those rights to be enforced by private or public interests.

Expanding Cedar-Silva's proposition, Lloyd (2001: 505) argues that unequal access to information or 'digital literacy divide' is at the core a socio-economic issue: that decreasing price of connectivity does not present equal opportunity to crucial social information, if the citizenry is still hampered by demographic, geographic and socio-economic factors. It is this socio-economic factor, which amplifies access inequality: that access to information and more specifically legal information is facilitated by the ability to pay. The implications for this passivity is chilling: that we as citizens and the elected government, are wittingly and willingly surrendering public information to market forces and allowing these forces to drive the innovation and modernization of public information. If the interests of the private sector drives inno-

vation and content modernisation, then that means access to public information is reduced to a marketplace.

Cedar-Silva's contradiction is similarly observed by Perez (2013: 61-63), who argues that the success of the Internet is attributed to its democratic environment, powered by a combination of private-public interests intent to learn and create new ways of learning, production and consumption. Perez observes that as soon as an initiative is centrally coordinated or institutionalized, the creative process, consultation and civic focus is lost. Like Cedar-Silva, Perez argues that the Internet largely remains a private sector environment and the private interests will always be financially driven.

5 Innovation and the Commons

Innovation, especially in the field of AI/technology represents new opportunities for private sector to become more competitive and consumer focused, as well as enabling public sector to serve community needs in more efficient ways (Cann 1989: 1167). Innovation should mean the expansion of consumer choice and challenging the status quo of the commercial and public sector. However, if the rewards of innovation are not harmonized with the community at large, the drive for innovation will be to achieve financial gains. Cann (1989: 1168) argues that there is lack of recognition that innovation is predominantly driven by "parochial self-interest". He argues that it is flawed not to evaluate innovation in a more holistic manner: that is, harmonising the benefits of innovation for the community at large and the private sector. In the free market, states are reluctant to introduce protectionist policies to emerging technology (legal or otherwise) as it is seen to be paternalistic and stifling competition. It is in this climate that the private sector has the discipline and motivation to excel and bring forth the best of breed.

Add to the mix is the emerging trend of grass-root innovation. Growing interest and the low cost of entry to create online presence has witnessed innovative online tools created by private individuals. Specific to the Australian legal industry, the Internet is host to a plethora of independent websites. This demonstrates that the conversation has moved from "who has a right to internet" to "who has a right to legal content". To my point of changing consumption patterns, for the first time in a long time, New Zealand Law Reports, United Kingdom Reports, Victorian Reports and NSW Law Reports are all now available in pay-per-view format at affordable A$15 to A$25 per Case. These Reports are still available in an enterprise subscription format, but the availability of these Reports at this competitive rates indicate that the stakeholders in the Courts and Law Reporting Councils recognise the inevitably of change in the profession brought on by emerging technology and AI. In the last 3 years, the Australian and UK Law Report Councils demonstrated courage and commitment to positive social outcomes in creating and pioneering new consumption patterns apropos to the changing milieu.

Again, referring to the legal publishing industry, the private sector which used to and to an extent, still holds a monopoly on innovation, is now faced with growing competition from smaller, more agile independent players, a majority of them private

individuals, who are able to create more agile ways of production, consumption and collaboration. The implication of this shift is simple yet powerful: the conversation about the benefits of innovation should now encompass the private sector, the private citizen and the government sector in a collaborative, reciprocal manner. The era of top-down monetization and consumption approach is rapidly losing its hold. The technological advances in connectivity mean that the dialogue about access to content is a tripartite conversation (Lloyd 2001: 505). The way in which we can translate innovation into improving social realities is one when the Internet is driven and advised by "participation of local stakeholders with a global reach in mind" (Cedar-Silva 2013: 26).

6 The Right to Internet as a Human Right?

The nature of the Internet is also its key success factor: that it is freehold, and that it crosses boundaries. It is this very characteristic, which makes the Internet, a prime post-modern means to improve social reality on a local and global level. No country on earth currently protects 'the right to the Internet'. No state or commercial entity can enforce his or her sovereign or private rights online, aside from the innocuous monetised enforcement. As such, the right to Internet is highly dependent on the level of development and democratic freedom in a specific country. This goes back to my earlier argument that whilst access to the Internet is fairly affordable, it is the equal access to content remains dubious. Article 19 of the International Covenant on Civil and Political Rights can possibly be used as a global covenant to safeguard this 'right to access'. More significantly for this discussion, Article 19 entrenches the freedom not only of access but also to

> "…to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice." (Land 2013: 393) (author's emphasis).

Although Article 19 does not guarantee a right to be online, it does provide a framework on how the government, private sector and private individuals can work to maintain this freedom. Land recommends the reading of Article 19 by recognising that the technology underlying the content, serves as "framing device" to enable choices to be made. That the Internet as an enabler of rights, is made possible through efficient architecture designing, easier to learn coding skills, increased open source standards and most importantly, a growing number of cross-border of grass-roots movements who collaborate to effect social change locally and globally (Land ibid, 395). I draw on the examples of the Arab spring revolution that was galvanized through Facebook and the resourcefulness of local activists in China who expose state censorship using other online mediums, as Facebook is banned (Cedar Silva 2013, 17).

How do the competing stakeholders in the online environment balance the public and private sector's interest to pursue optimum return on investment, in light of maintaining an entrenched freedom of access and freedom to access content in the format of choice? To this point, I ask the question: does that mean the traditional practice of placing key legal information behind an unaffordable pay wall, poses as a possible breach Article 19?

7 Public and Private Interest serving to Democratise Access to Technology and Access to Content

In light of the dire diagnosis of innovation and benefits of technology, is the common person doomed to be the last adopters of due to high barrier to entry? As cheaper access to Internet feeds the growth in self-taught programmers and grass-roots' sites, it is realistic to utilise a neocorporatist model in engaging the three parties in the dialogue on democratising access to technology and access to content (Barton 2015: 542). Without diverging from our discussion, it is important to remind ourselves that the neocorporatist or liberal corporatist approach describes how the socio-economic policies of a society is brought about through the engagement of private sector, private individuals and the government through consultation, cooperation and establishment of common benchmarks, protocols and outcomes (Preminger 2017: 85-99). This may seem idealistic, but this approach will mean that every stakeholder level not only has a say but has an obligation to effect a change in the commons: may it be in enforcing civic rights or pursuing commercial pragmatism. If the public sector and private citizens remain a passive voice in 'netizenship' then the paradigm will always be one, which prioritises commercial interest. (ibid: 90).

I do not suggest that in order to reclaim the Internet as a civic commons, one need to embark on radicalized movements as exemplified by anti-globalised movements. Rather, it is a dialogue towards establishing tripartite protocols involving the nomenclature from all sides to enable improved access to the Internet and access to content (Waters 2004: 854-874). The following are my proposed re-imagining on democratizing access and access to content, in the context of legal information.

7.1 Sustainability and maintaining the quality of independent sites:

Returning to the 'fox pup' scenario and access to legal information in Australia, content is predominantly found in government sites as well as commercial online sites maintained by LexisNexis, Thomson Reuters and Wolters Kluwer. For the members of public, legal content can be sourced from the publicly funded, non-profit met site AustLII, JADE a crowd-sourced, freemium legal site and a plethora of other smaller self-publishing non-profit sites. Irrespective of the public-private nature of the sites, all raw data is sourced free-of-charge from the state.

The breakthrough in publishing technologies and e-business innovation as produced by the commercial publishers are hidden behind paywalls. It is ironic that the innovation based on data sourced from the state; yet the state does not benefit from

this data exchange. In fact, consider the millions of dollars which have to be spent on legal publishers by the State Department of Justice annually to subscribe to reports, case law and legislation.

In the absence of any publishing protocol or regulation, the 'revolution' of the smaller, online publishers take form: some for altruistic reasons, some for commercial reasons.[9] The unaffordability of the commercial legal publishers and low cost to data parsing has witnessed a demand (and support) for smaller publishers. In Australia, an increasing number of practitioners (and non practitioners) are turning to AustLII and JADE. These two online publishers, one a donation-based metasite and another crowd-sourced funded site, are constantly monitored by Judgment Offices for accuracy, currency and quality. This leaves a gap in maintaining such standards in the commons. In the absence of a coherent policy or republishing protocol, the relevance of sites who self-publish are defined by their own purpose. A donation-based site is behoven to foundational funds, a crowd-sourced organisation can only grow as fast as the crowd-funding metrics and a privately funded site will only last as long as the entrepreneurial drive is sustained (Cay Johnston 2006: 65) There is an imperative to create a set of republishing standards which maintains accuracy, quality, currency, access and technology knowledge exchange.

7.2 Community-based consultation, outcomes and benchmarks

The *raison d'être* of the private sector is to monetize and increase shareholder value. This is predominantly done through identifying innovative ways to produce and consume. The public sector does not hold this reason: its primary reason of being is to serve the community. The public sector is not expected to be agile. So, in the context of legal publishing, how can the community at large benefit from any publishing agility or innovation? As there is no reciprocal technology transfer protocol between private sector and the government, the state is literally giving away the family jewels to the private sector in the absence of community consultation. I propose that in this context, that the community is informed on the manner in which legal information is harvested from the government sites, the manner in which they are republished and commercialised, and the effected 'returns' to the community. Private citizens have a right to know how their taxes are being used to inadvertently fund private innovation, and have a say on how this can benefit the community.

Further to this, the public sector can no longer rely on the private sector to realize change but it must actively engage with smaller entities to create a monetization, commercialization outcomes and reproduction policy, which provides equal playing field for all.

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[9] In 2012, US legal tech start-ups or disruptive legal technology providers raised over U$60 million and 2013 witnessed a growth of $458mil. This figure started to decline as cost of programming and cloud computing become more affordable, as reported by Joshua Kubicki, 2013 Was a Big Year for Legal Startups; 2014 Could Be Bigger in Tech Cocktail (Feb. 14, 2014, 12:07 PM), http://tech.co/2013-big-year-legal-startups-2014-bigger- 2014-02,

An example of successful and profitable private-public sector collaboration is the arrangement between CanLII, metasite similar to AustLII based in Canada. CanLII's content is powered by Lexum, legal technology provider based in Montreal which created a 'freemium' model to law reports in Canada. This site is not funded by donations, rather through a combination of funds raised by law societies and the members of the Canadian bar. Lexum similarly collaborates with other disruptive legal technology players and from an overseas standpoint, seems to co-fund the metasite through innovation-transfer.[10]

7.3 Platform agnostic and blockchain transactions

Blockchain, in the simplest terms, is a system of recording digital transactions: from financial records to how many times a PDF was downloaded from a monetised information website.[11] The underlying structure of the blockchain reveals a network of distributed databases capable of reconciling transactions. Consider the legal publishing world: a new paradigm in which the user does not have to subscribe to any platform but is still able to purchase and access content from across a myriad of platforms. The user does not have to consider currency or inventory exchange or how bills are issued. The user simply searches and purchases content at the end, and the transaction is reconciled. The user receives a bill on the frequency required i.e. monthly or quarterly, and the publishers of the content are monetised as soon as the purchase takes place.[12]

The key to blockchain resembles the milieu that I referred to earlier: that it operates in publishing protocols and standards agreed to by the private-public and community. The hard question remains: despite the growing trend towards platform agnosticism and Google-pendency, no commercial legal publisher of content would allow federated searches to cross their pay walls. All publishers, legal and commercial believe in the superiority of their content and the expensive, unaffordable and bewildering pricing structures reflect this perceived superiority. The lack of collaboration between publishers also reflects their fear of losing market hegemony and the disappearance of smaller disruptors gobbled up by capital (Gallacher 2009: 8-10). Thus, returning us to the debate of unequal access to content despite equal access to the Internet.

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[10] https://lexum.com/en/ accessed 19 July 2017

[11] Definition of blockchain from https://blockgeeks.com/guides/what-is-blockchain-technology/ and "What is Blockchain" from http://www.coindesk.com/information/what-is-blockchain-technology/, accessed 19 July 2017

[12] At the time of writing, the Consolidated Councils of Law Report in Australia, LexisNexis, ThomsonReuters and JADE have agreed to an interlinking protocol which enables a user to link from one platform to another. This groundbreaking protocol represents the judicial and practitioner recognition of enabling equal access to content, and is the first concerted step in private-public collaboration. Aside from JADE, none of the legal publishers have opened this option to their customer base. AustLII and Wolters Kluwer have declined to participate in the undertaking of this protocol.

8 Conclusion

The innovation and development in AI/technology and indeed the cheaper access to the online environment has not provided 'netizens' with equitable access to legal information. The 'netizenry' remains a disgruntled yet passive voice, happy to grouse that the state is failing its responsibility in sustaining and maintaining equal opportunity to technology and content, but also unwilling to be involved in effecting change. The paradoxical paradigm of cheaper access to the Internet and equitable access to legal information can only be addressed if the three major parties in this environment recognise the importance of each other's role and obligation in fostering innovation and equitable access. The private citizens, by being silent and passive on the commodification of public information is as culpable as the state in eroding basic human rights. The private sector, unimpeded by government policy or community-based protocols will continue to pursue monetization objectives. To close, consider a quote from Lloyd (2001) who said, "We must understand that the digital divide, like the justice divide, is a political divide".

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