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Freeing the Law: BAILII and IRLII¹

Introduction

This article discusses recent developments in relation to the British and Irish Legal Information Institute (BAILII: www.bailii.org) and the Irish Legal Information Initiative (IRLII: www.irlii.org). These websites provide free searchable access to primary legal materials from Ireland and Britain, as well as a variety of services to enhance access to secondary legal materials. The article will briefly trace the history of BAILII and IRLII, explain what they have to offer and also seek to set them in the broader context of developments in other jurisdictions.

The Establishment of BAILII

The genesis of BAILII can be traced to a “Free the Law” meeting in London in November 1999, which was addressed by Professor Graham Greenleaf, one of the co-founders of the Australasian Legal Information Institute (AustLII). AustLII had been offering a very successful service since 1995 and had revolutionised access to legal information in Australia. The meeting in question generated a great deal of enthusiasm about the prospect of developing a similar service in the United Kingdom and Ireland, with Laurie West-Knights and Lord Justice Henry Brooke to the forefront of the effort. There were in fact a great many technical and bureaucratic obstacles in the way. However, matters were moved forward rather more quickly than might have been expected by the initiative of Professor Andrew Mowbray, the other co-founder of AustLII. With remarkable determination and effort, he had developed a working prototype of BAILII by early 2000. I became involved as then Dean of the Law Faculty at University College Cork and, working with Andrew Mowbray, took responsibility for organising the Irish contribution to the nascent BAILII website. I organised a meeting of interested parties in Dublin in February 2000 and, thanks to the co-operation of the Courts Service and the Attorney General’s Office, the Irish contribution to BAILII was extremely strong from the outset. We also triggered considerable interest from Northern Ireland and the consolidated Northern Irish statutes going back to 1495 were included on BAILII from the start. The BAILII website had its first public launch in April 2000 at University College Cork. The support which BAILII has received from the Irish judiciary, in particular from the former Chief Justice Ronan Keane, was in evidence from the beginning and Mr Justice Iarfhlaith O’Neill of the High Court kindly performed the launch.

Not long afterwards, the formal BAILII charitable corporation was incorporated in London and took over responsibility for running BAILII. I am the Irish trustee-director. The other trustee-directors are Lord Justice Brooke (Chairperson), Lord Mark Saville, Professor Philip Leith (Northern Ireland), Professor Alan Paterson (Scotland), Robin Ap Cynan (solicitor, representing Wales); Professor Andrew Mowbray (AustLII) and Clive Freedman (barrister). Irish funding for BAILII has come from the Law Society of Ireland

¹ This article draws upon another article by the author entitled “Freeing the Law in Ireland” which was published in Delia Venables’ Internet Newsletter for Lawyers Nov/Dec 2004.

and the Arthur Cox Foundation and, in 2004, the Bar Council of Ireland generously provided €10,000 in funding. The main BAILII operation is located in London at the Institute of Advanced Legal Studies, Russell Square and is headed by Joe Ury, the Executive Director of BAILII. As at October 2004, BAILII included 46 databases covering 7 jurisdictions. The system contains around 7.5 gigabytes of legal materials and around 400,000 searchable documents with about 15 million internal hypertext links.

The Wider Movement to Free the Law²

BAILII is one of an increasing network of legal information institutes which are being developed around the world. The first of these, simply called LII (Legal Information Institute), was established in 1992 at Cornell in the United States. As well as AustLII and BAILII, there is now also the Canadian Legal Information Institute (CanLII),³ the Pacific Islands Legal Information Institute (PacLII),⁴ the Hong Kong Legal Information Institute (HKLII),⁵ the Southern African Legal Information Institute (SAFLII),⁶ the New Zealand Legal Information Institute (NZLII),⁷ JuriBurkina (covering Burkina Faso)⁸ and Droit Francophone⁹ which covers francophone countries, initially focusing on West and Central Africa.¹⁰



The logos of the various LIIs cooperating to establish WorldLII

At a meeting of Legal Information Institutes in Montreal and Sydney in 2002 and 2003, a declaration was adopted which indicates the common goals of the LIIs.¹¹ The declaration reads in part:

“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;

Public legal information is digital common property and should be accessible to all on a non-profit basis and free of charge;

² See generally Greenleaf “Global Legal Research: WorldLII and the Future”, Delia Venables’ Internet Newsletter for Lawyers Jan/Feb 2005.

³ See www.canlii.org.

⁴ See www.pacii.org.

⁵ See www.hklii.org.

⁶ See www.saflii.org.

⁷ See www.nzlii.org.

⁸ See www.juriburkina.org.

⁹ See <http://portail.droit.francophonie.org>.

¹⁰ As Greenleaf comments (see note 2 above, p 1): “A goal of the free access to law movement is to help create free Internet access to law in developing countries, preventing its publication becoming the monopoly of any organisation (including governments).”

¹¹ See www.worldlii.org/worldlii/declaration/.

Independent non-profit organisations have the right to publish public legal information and the government bodies that create or control that information should provide access to it so that it can be published.”

The declaration goes on to explain that “public legal information” means “legal information produced by public bodies that have a duty to produce law and make it public” and it includes “primary sources of law, such as legislation, case law and treaties, as well as various secondary (interpretative) public sources, such as reports on preparatory work and law reform, and resulting from boards of inquiry.”

Another aim of the Legal Information Institute movement is the development of methods of accessing legal information on a global basis. To this end, global hubs are being developed. The various LIIs have worked together to create WorldLII (www.worldlii.org) which is hosted and run by AustLII. This provides searchable access to 455 databases from 55 countries (including all the BAILII databases), with the numbers growing by 25% each year. The idea is to have a common interface for users, which masks the technical differences between the sites of individual LIIs. WorldLII is essentially an English language hub, with Droit Francophone providing the beginnings of a French language hub.

Material on BAILII of Irish Interest

An unusual feature of the Irish situation is that, until very recently, BAILII has provided the only free access to the decisions of the Irish courts. BAILII contains a more or less comprehensive collection of the decisions of the Irish Supreme Court going back to 2001 (with a fair number of additional cases from 2000, 1999 and 1998). The High Court is also well-represented with a collection of over 1,500 decisions going back to 1997. Recently, a Court of Criminal Appeal database has also been added, with cases from 2004. The fact that, until late in 2004, there was no official website providing access to judgments (and the related fact that there has been no fully reliable feed of electronic judgments available to BAILII) has made more challenging the task of building up these databases. This has required ongoing work at University College Cork (with the assistance of law students) to make the cases ready for BAILII. Most of the Irish judgments on BAILII have been obtained from the Courts Service, although some have been scanned at University College Cork and others have been obtained from other sources.

BAILII also has decisions of the Competition Authority going back to 1996 and of the Information Commissioner back to 1998, as well as the reports and consultation papers of the Irish Law Reform Commission from its establishment in 1976. In terms of legislation, BAILII has Irish statutes going all the way back to independence in 1922 and the statutory instruments from 1922-1998.

A major advantage of BAILII is the ability to search across a range of databases, including both legislation and case law, which span a number of different but cognate legal jurisdictions. BAILII also has legislation from Northern Ireland, England, Scotland and Wales, as well as databases of the decisions of English, Scottish and Northern Ireland

courts and tribunals. Furthermore, the site also includes decisions of the House of Lords and the Privy Council (going back to 1996 in each case). A recent addition is a database of decisions of the European Court of Justice (including the Court of First Instance) since 1954.

In late 2004, the Courts Service began to put up judgments on its website (www.courts.ie). The Courts Service site at present contains Supreme Court cases going back to 2001 and Court of Criminal Appeal cases from 2004 (with High Court cases, from 2004 onwards it seems, to be added fairly soon). This long-awaited development is much to be welcomed and it is hoped that it will facilitate the future development of BAILII's Irish collection. It is normal for LIIs to operate alongside official governmental sites which provide free access to case law. One advantage of a site such as BAILII is that it allows one to access a variety of information (judgments, legislation, law reform publications, tribunal decisions, foreign cases etc) in a uniform format at one easily searchable site. Sites such as BAILII also serve as a guarantee for the public that, in difficult economic times, governments will not be able to change their policy and begin to extract a charge for accessing legal information. In the Irish context, it seems that there is the further advantage that BAILII's collections go further back into the past than appears to be envisaged for the Courts Service site (e.g. there are over 300 extra Supreme Court cases on BAILII as compared to the Courts Service site).

The role of IRLII

In 2001, I established the IRLII (Irish Legal Information Initiative) website at www.irlii.org, hosted by University College Cork. (IRLII is, by the way, pronounced as "early", and BAILII is pronounced as "bay-lee"). It is managed by myself and Micheal O'Dowd. While it is a 'LII' like BAILII, AustLII or CanLII, IRLII is called an 'Initiative' rather than an 'Institute' to emphasise that it is intended as a complement to BAILII rather than as a rival. IRLII started life as a simple webpage, where recent judgments could be uploaded pending their availability on the BAILII database. At that stage, it took some weeks for new cases to be uploaded onto the BAILII website. Now that BAILII's permanent staff, led by Joe Ury, have been established in London, the Irish judgments can be promptly loaded onto the main BAILII site. However, rather than discontinue the IRLII service, the decision was taken to broaden its appeal.

IRLII now offers customised access to the BAILII site for Irish users. Moreover, it offers five additional services which go beyond the type offered on the main BAILII site: the IRLII Index of Irish cases, the Leading Cases database, the Periodicals Index, the Statutory Instruments Index, and Statutes. These will now be explained in turn.

1. The *IRLII Index of Irish Cases* endeavours to index all judgments delivered by the Superior Courts in Ireland since 1997 (whether or not the judgment is on BAILII), while selected earlier judgments are also indexed. Where the full text of a judgment is available on BAILII, a hyperlink is provided. Citations to the Irish Reports and the Irish Law Reports Monthly are also provided where applicable. The Index can be sorted by date or alphabetically.

2. As part of a *Leading Irish Cases* project funded by the Arthur Cox Foundation, UCC Faculty of Law lecturers have identified more than 200 Irish cases from over the decades which are of particular importance in a variety of legal subject areas. IRLII staff have scanned and proofread the relevant cases, which are grouped on the IRLII site under 22 subject headings. All these cases have been added to the main BAILII databases but it is only possible to view them by subject area on IRLII. (Interestingly, BAILII has recently obtained considerable funding from UK sources to allow a similar project to proceed in relation to leading UK cases).¹²
3. The *Periodicals Index* is concerned with secondary legal sources, and is quickly proving to be the most popular IRLII resource. The articles in seventeen Irish legal periodicals are indexed since 1997 (although some periodicals have ceased to exist and more have come into being since that date). Due to copyright restrictions, the full text of each article is not available but the title, author, citation and keywords relevant to each article are provided. The index can be searched, either by author and title, or by keyword, or can be browsed by journal title.
4. The *Statutory Instruments Index* is the only freely available index to Irish statutory instruments for 2004. Although instruments and regulations up to 2003 are available from the Attorney General's website (see www.irishstatutebook.ie), there is no comprehensive source of more recent secondary legislation. IRLII updates the statutory instruments index whenever new material is notified in *Iris Oifigiúil*, and a hyperlink is provided if the particular piece of legislation is available online on a government department website or elsewhere (although unfortunately many recent statutory instruments are not available anywhere on the web).
5. IRLII also provides access to HTML versions of recent Irish statutes. These are subsequently uploaded to BAILII.

IRLII is still being developed and expanded. The most recent feature is the 'search by citation' function which allows a user to retrieve a case using the BAILII vendor-neutral citation or commercial citations such as those used by the Irish Reports or the Irish Law Reports Monthly.

There would be obvious advantages in integrating the IRLII services into the main BAILII site. However, in its current state of development, the BAILII site is concerned with providing free access to primary legal materials and the more varied services offered by IRLII do not comfortably fit within that model. It is likely that IRLII will continue to exist as a separate site for the foreseeable future but as the BAILII project develops we will continue to explore the possibilities for bringing the two websites closer together.

¹² This funding, roughly UK£220,000 from JISC (the Joint Information Systems Committee, a UK educational funding body), will also fund further improvements to the BAILII search engine. This should be of direct benefit to Irish users (and the creation of a Leading UK cases database is also likely to be beneficial to users in this jurisdiction).

Vendor-Neutral Citations

One aim of BAILII has been to promote good practice in relation to vendor-neutral citations (sometimes referred to as “court-designated” citations).¹³ A vendor-neutral citation is a unique officially-designated identifier for every judgment circulated by a Courts Service. This identifier is intended to ensure that, where a judgment is later cited in Court or referred to in another judgment or is reported, digested or indexed, the number will uniquely identify the decision regardless of whatever other citation or reference is used (e.g. IR or ILRM). In recent years, courts in other jurisdictions have been requiring that the vendor-neutral citation be used when referring to cases in submissions to Court, even where reported references are also used. Thus, the vendor-neutral citation becomes part of the official ‘name’ of the case, along with the names of the plaintiff and the defendant. In 2001 and 2002 the English courts adopted a system of vendor-neutral citation.¹⁴ Thus, for example, the first decision of the House of Lords in 2004 is to be cited as *Regina v Webber* [2004] UKHL 1. To refer to the tenth paragraph of that case, one would write: *Regina v Webber* [2004] UKHL 1 at [10]. Similarly, the High Court of Australia uses the style: [2005] HCA 1.

Anyone who has swum in the alphabet soup of, for example, family law case names, will see the merit in having a definitive means of identifying individual cases. Vendor-neutral citations are very valuable in allowing indexers to keep track of the increasing volume of case law, in allowing convenient and uniform citation of judgments which have not been reported by commercial publishers, in avoiding difficulties caused by the fact that a judgment may be reported in a number of different locations and in allowing courts to refer conveniently to decisions from other jurisdictions. From the point of view of systems such as BAILII, the use of vendor-neutral citations also makes it much easier to add value to the provision of information via the internet, for example through the automated insertion of hyperlinks whenever one judgment is referred to in another judgment on the system.¹⁵

Until recently there was no official system of vendor-neutral or court-designated citation for Irish cases. In order to encourage the introduction of such a system, BAILII has from the start adopted an unofficial model of neutral citation designed to show the possibilities which exist. For the purposes of its recently-introduced website, and following representations from BAILII, the Courts Service has agreed to adopt the style proposed by BAILII. Thus, Supreme Court decisions are referred to in this style: “AG v Dyer [2004] IESC 1” and Court of Criminal Appeal cases in this style: “DPP v Botha [2004] IECCA 1”. When High Court cases are added, the BAILII style of “X v Y [2005] IEHC 1” will be employed. The agreement on a universal style of identifying Irish cases is

¹³ For a discussion of the relevant issues, see Mowbray, Greenleaf and Chung “A Uniform Approach for Vendor and Media Neutral Citation - the Australian Experience” available at <http://austlii.edu.au/~andrew/citation.html>. See also “Citations and Access to Judgments: Report and Resolution of the BILETA Citations Workshop held at SCRIPT, University of Edinburgh 11-12 March 2000” available at www.bileta.ac.uk/citations/citreport.html.

¹⁴ See the explanation at www.bailii.org/bailii/citation.html.

¹⁵ This takes place already on BAILII but it involves the time-consuming creation of tables linking commercial citations to the cases on the system.

greatly to be welcomed. The agreement of the Courts Service to adopt the BAILII style of vendor-neutral citations has required a once-off adjustment of the urls (web addresses) for Supreme Court cases on BAILII (from 2001 to 2004), since the BAILII system requires that the url be based on the vendor-neutral citation of the case in question.¹⁶

Although the adoption of the vendor-neutral citations on the Courts Services website (and by BAILII and, for example, the Irish Reports) clearly gives them an official status, it remains to be seen whether their full potential will be exploited in the short term. In England, the process has required the courts to issue practice directions explaining the system of vendor-neutral citation and making stipulations to their usage.¹⁷ It is to be hoped that, perhaps when the High Court cases are added to the Courts Service website and the system has been consolidated, a practice direction would be forthcoming which would set out clear instructions in relation to the use of the vendor-neutral citations. It is worth noting that s 46 of the Courts and Court Officers Act 2002 requires the Courts Service to keep a register of reserved judgments.¹⁸ This provision has recently been brought into effect by statutory instrument with a starting date of March 31st 2005.¹⁹ It would seem that the introduction of the register could also provide a convenient opportunity to copper-fasten the new system of vendor-neutral citations.

Conclusion

One aim of legal information institutes has always been to raise the bar in terms of commercial publishing, making it clear that one cannot charge the public simply for providing basic legal information without adding any value. Recent developments, most notably the inception of a judgments database on the Courts Service website and the adoption of vendor-neutral citations, show an improvement in the climate within which BAILII and IRLII operate. The two websites, the generosity of their donors permitting, will continue to develop and expand the services they offer and will work together with similar projects across the world towards the creation of an efficient world architecture for access to legal information.

¹⁶ For an aid to updating such hyperlinks, go to www.ucc.ie/law/irlil/irlilindex/cnewcite.php. Alternatively, one can find the new url on BAILII itself, by going to www.bailii.org/ie/cases/IESC and finding the case alphabetically or by date. Note that in a few instances BAILII has Supreme Court cases from the relevant years which are not on the Courts Service site. Such cases do not yet have an official vendor-neutral citation and we have given them a number in a separate sequence beginning with 200 to indicate that the numbers are unofficial.

¹⁷ See the Practice Directions collected at www.bailii.org/bailii/citation.html.

¹⁸ See O'Mahony "No Reservations" (2002) 96(6) *Law Society Gazette* 33.

¹⁹ See Courts and Court Officers Act 2002 (Section 46)(Commencement) Order 2004 (S.I. No 712 of 2004).