

## AustLII's Business Models: Constraints and Opportunities in Funding Free Access to Law

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# AustLII's business models: Constraints and opportunities in funding free access to law\*

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**Abstract:** The Australasian Legal Information Institute (AustLII) has provided free access to an increasing range and amount of legal information from Australia for thirteen years since 1995. This paper analyses the constraints within which AustLII operates. It then describes the business model – or to be more accurate, the combination of business models – that have enabled it to do so, and some of the challenges involved in it doing so in a sustainable way in the future. The tentative conclusion is that the combination of business models adopted by AustLII, particularly in 2007 and 2008, is capable of sustaining its operations, at least in relation to maintenance of its existing databases, and probably for the creation of new and improved resources to a modest extent.

## 1 Introduction

### CHANGING BUSINESS MODELS

Grameen Bank gives microcredit<sup>1</sup>. It was founded by Nobel Prize winner Prof Mohammad Yunus of Bangladesh. In 2005 he decided to prove that the bank could extend its model to the lowest strata of society, which it called its 'Struggling (Beggar) Members'. It offered these members credit of less than US\$10 at local stores, allowed the (former) beggars to buy small amounts of matches, snacks etc, so as to give their clients a choice of either responding to their begging pleas, or buying something from them. Grameen also offered provision of a mobile phone repayable over 2 years interest-free, allowed its Struggling Members to offer purchase of phone calls as alternative to begging. Within a year over 750 Struggling Members had quit begging. They had become businesspersons. But many others still kept the security of a diversified business model. The moral?: It's never too late to change your business model.

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<sup>1</sup> See <<http://www.grameen-info.org/>>

Free-access law providers often start their operations with a grant, perhaps from an academic funding body, an international aid agency, or a philanthropic body. If they are successful, they soon have lots of little databases that are popular with users, and justify the original grant. But after a year or three, or longer if they are lucky, the original grant runs out, and the grant body informs them that it only provides start-up funds, not maintenance. But the little databases keep growing every year, and need more and more resources to sustain them.

#### LEGAL INFORMATION INSTITUTES AND FUNDING

The hallmark of ‘Legal Information Institutes’ (LIIs) is that they provide ‘free access’ to ‘public legal information’<sup>2</sup>. There are now 27 such LIIs forming the ‘Free Access to Law Movement’ (see Greenleaf, 2008 for a description<sup>3</sup>). From the perspective of their users, the LIIs are free to use, but of course they are not free to build or maintain. However, little has been written on the business models that LIIs have utilised to fund their operations.

The Australasian Legal Information Institute (AustLII) has provided free access to an increasing range and amount of legal information for thirteen years since 1995. In 2007 it faced a funding crisis due to becoming overly dependent on one main source of funding, a competitive academic grant. When it did not obtain that grant for 2007 it had to examine how it could sustain its operations, and diversify its sources of funding. Necessity proved to be the mother of invention once again, and this paper reflects on what can be learned from the last two years.

Since all LIIs operate in different contexts, and with slightly different objectives within the overall goals of their shared *Declaration on Free Access to Law* (Free Access to Law Movement, 2002), we can expect that the relevance of AustLII’s experience will vary greatly between LIIs. However, sharing experience of business models is of value to all operators of information services based on free or open content.

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<sup>2</sup> ‘Public legal information means legal information produced by public bodies that have a duty to produce law and make it public. 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. It also includes legal documents created as a result of public funding.’: *Declaration on Free Access to Law*, 2002

<sup>3</sup> Since that article, there are six additional members, from Uganda, Argentina, Jersey, France, Thailand and Mexico.

## BUSINESS MODELS BASED ON 'OPEN' CONTENT

There are an increasing number of studies which analyse the ways in which successful, sustainable, business models can be developed around various ways of providing content to users without requiring them to pay directly to access or use the content. For example, Clarke (2007) attempts to answer the question 'what business models enable content-developers to make their materials available in a content commons by means of open content licences, rather than seeking monopoly rents from the works by means of copyright licensing fees?' He uses the questions (i) 'Who Pays? (Consumers Pay; Producers Pay; Third Parties Pay); (ii) For What?; (iii) Why?; (iv) To Whom?' to categorise a wide array of what he calls open content business models.

Every non-government free access provider to law operates within unique constraints. However, the factors that are probably most common are that (i) funding will usually be very limited; and (ii) funding will rarely be long-term. As a result (iii) a high level of automation is desirable; and (iv) high levels of editorial intervention are probably unsustainable long-term.

This paper uses AustLII as a case study, starting with an analysis of just what 'open content' means in the context of AustLII's operations, then moving to an analysis of the elements which have made up AustLII's business model, and those which could do so in future.

### **2 The context of AustLII's business operations**

#### AUSTLII'S CORE BUSINESS

AustLII is a free access provider of legal information (AustLII Mission Statement, 2000: 5.4), operated as a joint facility by the Faculties of Law at the University of Technology, Sydney (UTS) and the University of New South Wales (UNSW). It has been supported since its inception through a 1994 funding application by the Council of Australian Law Deans (CALD) as research infrastructure benefiting all law schools. It has been operated on a non-profit basis by its host Universities, who are at present considering restructuring part of its Australian operations as a corporation with charitable objectives, so as to make donations funding easier to manage.

The AustLII website provides over 270 databases of Australian law including: consolidated legislation from all 9 jurisdictions; annual legislation and bills from some; Point-in-Time legislation from three States; decisions from over 120 Courts and Tribunals (half of which are not otherwise available online); all Australian Treaties since 1900; law reform reports from all jurisdictions; and over 40 law journals in full text. The

historical depth of its case law is very variable, often extending only 5-10 years, but it extends back to the commencement of almost all federal Courts and Tribunals, including being comprehensive for High Court decisions back to the Court's first decision in 1903. Subject-oriented searchable 'Libraries' are being developed in some subjects. The AustLII-developed open source Sino search engine provides Boolean and proximity operators, fast response times, and displays of search results by relevance, date or database. AustLII's Australian databases obtain over 650,000 accesses per day, and it is the largest online provider of access to Australian law.

The multi-country LIIs (WorldLII, AsianLII and CommonLII) operated by AustLII have a joint function. They are portals which involve the provision of access to about 400 databases developed and maintained by other LIIs. They also include over 250 databases maintained by AustLII, plus the largest Internet catalog of law-related websites (WorldLII Catalog) (see Greenleaf, 2008 for an overview). These databases and Catalog receive around 100,000 accesses per day. They are maintained by a much smaller number of staff, mainly because they are not updated as frequently. This paper does not deal with how those international services are funded.

AustLII's annual budget was approximately A\$1.5M between 2000-06 (as at December 2008, A\$1 is worth approximately US \$0.66). On average, 65-75% of this budget has been expended on AustLII's Australian operations, with the amount varying somewhat depending on the nature of grants obtained from year to year. Subsequent amounts are in Australian dollars.

#### CONSTRAINT #1: 'MISSION CONSTRAINTS'

The main constraints within which AustLII works are indicated by its location in two University Law Faculties, and its Mission Statement based on an explicit commitment to 'free public access', according to which it has operated for fourteen years.

Universities place high value on grants for research and research infrastructure, and also a value on reputational benefits that accrue to the Universities from high visibility public service such as providing public access to law. On the other hand, they are very adverse to reputational and legal risks. UNSW has a high commitment to Asian engagement, which assists some of AustLII's international projects. The two Law Faculties have similar values to the Universities, particularly in relation to the obtaining of grants. UNSW Law Faculty places an unusually high value on 'social justice' activities, within which AustLII's provision of public access fits comfortably. Similar values are found at UTS Law Faculty.

## CONSTRAINT #2: 'FREE ACCESS' IS NOT 'OPEN CONTENT'

'Open content' is properly used to refer to content that anyone may reproduce, either because it is in the public domain (in the narrow sense) because of the expiry of copyright, or because the copyright owner has made it available for reproduction by a licence to the public such as a Creative Commons licence. Very little content available for free access via the AustLII website is 'open content' in this sense. First, legislation and case decisions and administrative documents (such as law reform reports) are all subject to Crown copyright in Australia. Although the Berne Convention specifically enables governments to exempt such documents from copyright protection, Australia has not done so, unlike most other countries in the world<sup>4</sup>. The Copyright Law Review Committee (CLRC, 2005) recommended that Crown copyright in legislation and case law be repealed, but that has not yet occurred. AustLII supported such repeal in a submission to the CLRC.

These factors flowing from Australian copyright law impose a number of very significant limitations on what business models AustLII can adopt. First, most data on AustLII cannot be described as 'open content': neither AustLII nor its users are permitted to republish the data for purposes other than which it is impliedly or expressly provided, with the exception of data from New South Wales or the Northern Territory (where commercial re-use is permitted). Second, AustLII could not knowingly provide at least some of the data it receives to other parties for them to republish for commercial purposes.

Only the State of New South Wales (since the early 1990s) and the Northern Territory (more recently) have made declarations that their legislation and case law may be reproduced for any purpose, subject to some minimal conditions concerning integrity of the information. From some other Australian jurisdictions, when AustLII receives legislation or case law from the government providers of same, it does so on the basis that it is receiving it for the purposes of providing free access to the public via publication on the AustLII website, and consequently receives an implied licence to do so for that purpose. Any use of that information outside the terms of the implied licence would be a breach of copyright by AustLII. From yet other Australian jurisdictions, AustLII receives

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<sup>4</sup> For example, of the 27/28 countries in Asia with copyright laws, only a handful (North Korea, Myanmar, Brunei and Singapore) retain government copyright in legislation: Greenleaf, Chung and Mowbray, 2007; an as-yet-incomplete survey by the author of European countries shows much the same situation.

legislation and case law under formal contracts between the State government and AustLII's host Universities, the terms of which are sometimes even more restrictive. For example, the contracts are explicit that AustLII may only use the data provided for the provision of free access services. The contract concerning legislation from one State even specifies the data formats in which AustLII is permitted to provide legislation to its users.

### CONSTRAINT #3: WEB SPIDERS AND SEARCH ENGINES

The environmental factor that Internet-wide search engines used web spiders/robots to make most of the world-wide-web searchable imposes on AustLII privacy constraints concerning case law. Australian courts do not allow web spiders to access their cases, so AustLII cannot do so either (and has not done since 1995, before Australian courts developed their own policies). It would also be fatal to AustLII's reputation, as we find from the sudden rush of complaints every time a search engine web spider makes a mistake and indexes some of our case law content. But this depends on the legal culture of the country concerned.

Internet-wide search engines also pose some other dilemmas for LIIs. Allowing search engines to search other content on AustLII (legislation, law journals etc) increases access rates, and assists in demonstrating value to stakeholders, so it is useful. Search engines benefit through advertisements from the value-adding to source data undertaken by LIIs, without paying any of the cost of that value-adding. The same can be said for any content which content providers allow search engines to make searchable. AustLII, like most other LIIs, has made the strategic decision to let web spiders into all AustLII content except case law.

### ASSESSING OPPORTUNITIES AND RISKS

The expression 'business models' can refer to both profit-making organisations and to non-profit organisations such as AustLII that nevertheless have to cover their costs of operation, usually from a variety of activities which generate revenue, and which we will call 'business activities'. Any activities of an organisation involve some potential risks, even if only the risk of loss of the financial cost of carrying out the activity if it does not generate the expected revenue. Risks to reputation are also important. Business activities also involve the potential to generate revenue. The approach taken in this paper is to broadly categorise actual or possible business activities into those that are more promising and those that are less promising, based mainly on the possible risks involved. In other words it is a moderately conservative 'risk avoiding' analysis.

### 3 More promising business activities

The business activities described in this part are either ones that AustLII has already undertaken (and often would like to undertake more intensively), or has not yet undertaken but it seems would be potentially valuable and involve low risk. The reason that some of these activities have not as yet been undertaken, or not undertaken sufficiently, has been that AustLII has had insufficient staff resources to do so.

#### DONATION FUNDING FROM SUBSTANTIAL USERS

From April 2007 AustLII realised that its funding problems would not be solved by finding a single donor to substitute for the major grant on which it had come to rely. Through a public appeal for contributions on its website for the first time, via press publicity, and by direct contact with identifiable<sup>5</sup> major users, AustLII communicated its position well enough to expand its contribution base dramatically. AustLII is also progressively contacting all large law firms, barristers chambers and businesses in law-oriented areas (eg banks and accountants), on the assumption that all of them are AustLII users to some extent. This also results in contributions.

In mid-2008 AustLII appointed an External Relations Manager, one of whose main roles is to ensure continuity of contribution income. Details of all contributions are published in AustLII's Annual Report (2007) and online<sup>6</sup>.

In 2007 these approaches resulted in 120 legal profession bodies (law firms, barristers chambers, law societies, bar associations etc) contributing up to \$50,000 each. Many individual lawyers also contributed, with contributions ranging from \$20 to \$5,000 (in some cases anonymously). Most of the corporate contributors, have renewed their contributions in

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<sup>5</sup> AustLII does not require users to identify themselves in order to use its services, in keeping with the principle of 'free and anonymous access' in the Declaration on Free Access to Law, and can therefore only identify users by the IP address through which they access AustLII. Because most users in the commercial sector access the Internet via commercial ISPs, AustLII only sees the IP address of the ISP for these users. In contrast, users accessing AustLII via Universities or government agencies are identifiable by .edu.au or .gov.au IP addresses. This allows separate identification of most Universities, but not of most individual State or Territory government agencies, as they tend to be grouped under one IP address. Some law firms, barristers chambers and businesses have individually identifiable IP addresses and can therefore be referred to as 'identifiable users'.

<sup>6</sup> Details of all 2007 and 2008 contributors and contributions are at <<http://www.austlii.edu.au/austlii/sponsors/>>

2008, together with new legal profession contributors, contributing over \$350,000.

Almost all of the 30 Australian Law Schools contribute over \$360,000 between them<sup>7</sup>, with contributions ranging from \$30,000 to \$500, with a mean contribution of nearly \$10,000. All of AustLII's largest identifiable users (particularly large law firms, some ISPs dedicated to the legal profession, some businesses, and other legal publishers) are being progressively informed of their level of usage and requested to contribute. In most cases they decide to do so. On the other hand, many of the contributors to AustLII who can be classified as 'large users' are not identifiable as such through AustLII's logs, and volunteer to contribute without being specifically asked to do so.

Many government agencies are large users of AustLII (*Annual Report 2007: 12*). Where individual agencies are identifiable they usually make a significant contribution, such as the \$25,000 contributions by the Australian Taxation Office attributable primarily to its AustLII usage in 2007 and 2008. However, AustLII has not had success in obtaining 'whole of government' funding based on usage where individual agencies are not identifiable, as discussed later.

To represent the contributors discussed here solely as 'substantial users' is slightly misleading. In many cases they are contributing to AustLII at least in part because they view free public access to law as a worthwhile expenditure of corporate social responsibility funding. Their own usage is not the sole reason for contribution, but also the means by which they provide funding because they perceive AustLII to be of public value. In short, many of these contributions are in part altruistic.

#### ENGAGEMENT WITH LARGER USERS

Finding what new services, training or recognition larger users value has not been done adequately due to lack of staff resources. This has commenced in 2008 with the appointment of an External Relations Manager and such initiatives as the formation of a Victorian Support and Advisory Committee. It will be expanded as part of AustLII's funding strategy in 2009. As well as its inherent value in improving the quality of AustLII's services to users, improving response to the wishes of

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<sup>7</sup> AustLII's host Universities, UTS and UNSW each typically contribute about \$100,000 per year in addition, contingent on AustLII success in obtaining a competitive 'research infrastructure' Australian Research Council grant. AustLII has been successful for 2008 and 2009, but was of course not successful in 2007.

organisations who are or may become contributors is one of the most direct ways to increase contributions both horizontally and vertically.

#### FUNDING FROM DATA PROVIDERS FOR PUBLISHING

A different aspect of AustLII's business model is that in 2007 and 2008 19 Courts, Tribunals government agencies that provide data to AustLII to publish as part of its over 270 databases have also provided funding. They do so primarily to support AustLII's publication of their content as an effective way of bringing their content to their intended publics (thus also for altruistic reasons). They contribute over \$350,000 per year, ranging from \$40,000 (for example, from the Department of Foreign Affairs and Trade for publication of Australian Treaties), to between \$10,000 - \$25,000 from a large federal Court or Tribunal, to a few thousand dollars for a small tribunal. Some of these Courts and Tribunals do not publish their decisions for free access other than through AustLII.

A further development of this approach is where a government agency (or perhaps a professional association) goes beyond simply funding publication of their own content via AustLII, but also provides funding for development of a more general research resource in the area of law in which their agency or association has a particular interest. For example, the Australian Taxation Office is providing \$25,000 funding in 2009 for development of the Australian Taxation Law Library on AustLII<sup>8</sup>.

#### COMPLEMENTING COMMERCIAL PUBLISHERS

As a free-access provider, AustLII is not in direct competition with commercial legal publishers for market share, and is therefore able to collaborate with both large publishers and boutique publishers to enable them to better use content on AustLII to enhance their own products. Such collaboration leads to contributions, or contract development of facilities to assist collaboration.

Thomson Reuters, one of Australia's largest commercial legal publishers, has automated links to AustLII legislation where it does not publish its own, resulting in its being AustLII's largest commercial sector contributor for the past three years (between \$50-\$100,000 per year).

There is more potential for such collaboration with publishers. AustLII holds databases of cases of many Courts and Tribunals the large commercial publishers do not publish, and which are not available

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<sup>8</sup> < <http://www.austlii.edu.au/au/special/tax/>>

anywhere else in electronic form. AustLII's URL formats make such links automatable. Publishers could link to the cases on AustLII that they do not publish themselves, and AustLII can provide services to publishers to automate the linking. This approach does not involve AustLII providing content to other publishers, which it often could not do because of its copyright constraints previously discussed, only linking to content on AustLII. Smaller or niche legal publishers could be assisted to provide links from their content to primary legal materials, since they do not publish these themselves. AustLII currently provides such a facility for Standards Australia, to assist the location of legislation or case law that refers to specified standards, resulting in funding of around A\$30,000 per annum.

Some major legal publishers also use AustLII as a source to find editorial content (eg cases they do not publish), resulting in very substantial levels of access to AustLII's site. AustLII could automate customised complementary services (SDI) to advise other publishers of content they need to know for development of their own facilities.

The development of such complementary relationships with other legal publishers is a potential major funding stream for AustLII.

#### ASSISTING USERS TO FIND OTHER PUBLISHERS

A quite different type of cooperation with other legal publishers comes from AustLII's position as the most-used online site for Australian law, with at least eight times the access levels of any Australian commercial legal publisher<sup>9</sup>. AustLII wants its users to find content valuable to them, irrespective of location, so it is not in that sense in competition with commercial publishers. For some years in the early 2000s, AustLII developed with CCH Australia a facility for AustLII users to repeat their AustLII search over all CCH legal content, and obtain lists of search results from CCH, but they could only access the CCH content if they were CCH subscribers. This was useful to existing CCH subscribers who also used AustLII (and possibly preferred its search engine), also had the potential to allow non-subscribers to discover that CCH content was valuable to them and become subscribers. This relationship provided significant funding to AustLII during these years, but did not become a permanent arrangement because it was difficult to quantify the benefits to CCH, and CCH did not have any mechanisms for occasional purchases of its content by non-subscribers. AustLII's position 'upstream' of commercial legal publishers in relation to usage volumes is nevertheless a significant asset.

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<sup>9</sup> *Hitwise Website Report* for AustLII, November, 2008

### ASSISTING OTHER FREE ACCESS SERVICES

AustLII developed the Sino search engine<sup>10</sup> which is used by many other LIIs, and has provided it as open source software since 2007. It regards Sino as a collaborative resource shared between LIIs. AustLII has obtained some modest amounts of funding for assisting development of overseas LIIs (eg BAILII in its formative years, and NZLII more recently), which is more relevant to AustLII's funding of its international activities.

AustLII has not yet obtained funding in relation to assisting development of other Australian free access services, but could do so if appropriate opportunities arose. In particular, if Australian providers intended to use Sino, AustLII would be well-placed to provide support services, a common business model in relation to open source software.

### RESEARCH & INFRASTRUCTURE GRANTS

Success in obtaining competitive grant funds for research or the development of 'research infrastructure' is unpredictable from year to year (as the origins of this paper attest), only lasts from one to three years, and does not provide for maintenance of facilities once built. Nevertheless, it seems likely that a high proportion of AustLII's funding will continue to come from the success of AustLII researchers in obtaining such grants.

AustLII's current competitive grants, obtained since 2007 and relevant to its Australian services, are a grant from the Victorian Legal Services Board of A\$840,000 (2009-11) entitled 'Victoria as the model jurisdiction for free access to law', an Australian Research Council (ARC) 'research infrastructure' grant of \$170,000 (2008-09) to build the 'Australian Legal Scholarship Library', and an ARC 'Linkage' research grant of approximately \$300,000 (2008-11) for research and development on 'Improving case law'. Success in obtaining these grants carries with it commitments to make 'partner contributions' from Universities, Courts and businesses that might not otherwise be available. In particular, UNSW and UTS contribute on average around \$100,000 each to ARC research infrastructure grant applications, partly because of offsetting financial benefits that success in obtaining competitive grants brings to the whole University. As a result, at least for 2009-10, AustLII will have available to it nearly \$500,000 each year that it would not otherwise have had, to improve and expand its Australian services.

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<sup>10</sup> See <<http://www.austlii.edu.au/techlib/software/sino/>>

AustLII's main aim in future years is to continue the diversification of the range of funds to which it applies, so as to avoid over-reliance on one type of grant. Of course, success is never guaranteed, and depends to a significant extent on successful discharge of previous grant obligations. But an optimistic approach is that grant funding will continue to play a significant role in funding AustLII's Australian facilities. It plays an even larger role in relation to international projects, but that is not the subject here. It is also necessary to consider that success in developing grant-funded new facilities must then be paid for by expansion of donation funding in future to maintain those facilities.

#### **4 Less promising business activities**

Some of the business activities discussed in this part are found as part of other open content business models, but for reasons explained they pose a higher level of risks to AustLII's operations than the business activities previously discussed. They have not as yet been undertaken for those reasons, or have been less successful than elsewhere.

#### **LEGAL PROFESSION OR GOVERNMENT CORE FUNDING**

Other LIIs, particularly CanLII have been very successful in obtaining core funding from Law Societies and Bar Associations acting collectively, leading to governance arrangements in which they have a significant role. AustLII has had nearly two years of discussions with the Law Council of Australia and its constituent bodies. This has not resulted in major funding from the organisations of the legal profession, but individual legal profession bodies have between them contributed around \$100,000 in each of 2007 and 2008. To put this in perspective, one legal professional indemnity insurer has provided a \$50,000 contribution in year because it considers AustLII reduces the liability risks of the legal profession so significantly.

AustLII has had no success as yet in obtaining any 'whole of government' funding from any of Australia's nine governments, as distinct from funding from some individual agencies, Courts and Tribunals whose content AustLII publishes. However, discussions are ongoing which may lead to a 'whole of government' approach to the Standing Committee of Attorneys-General (SCAG) in 2009.

#### **ADVERTISING MODELS**

A report obtained from an experienced consultant (Dixon, 2008) concluded that the net returns to AustLII from the adoption of any type of advertising model would be minimal. Other large legal publishers do not use third-

party advertising on their websites, nor do any Courts or Tribunals or government legislation sites, or any University websites, despite their high traffic levels. The costs of advertising brokerage would take a high percentage of any revenues. Loss of reputation to both AustLII and its host Universities, and reduction in contributions would offset any likely revenue gains from advertising.

#### OTHER NON-VIABLE FUNDING MODELS

A number of other possibilities need to be mentioned but can be dismissed.

- ***Denial of services to non-contributors*** Blocking known significant users who are not contributors would present unacceptable risks to both AustLII's data licences (tied to the provision of 'free access') and its reputation. It would also be discriminatory because not all significant users are known due to the limitations of IP address logging. AustLII has adopted the alternative of making major known users directly aware that their peers do contribute, and this seems to be effective. The Annual Report discloses the extent to which major known users are contributors, but not their identities.
- ***Direct charges for access*** These are impossible due to data licences in most jurisdictions. AustLII's national coverage would disappear, its reputation based on free access would be lost, and it would lose most existing contributions, and at least some competitive grant funding.
- ***Charging for republication of content*** On-supply of data for republication is not allowed by most of AustLII's data licences. Loss of national coverage would diminish demand significantly.
- ***Operation of closed data services*** Paid 'value added' services are often suggested. They create an inherent conflict of interests between what is free and what is 'value added', and the decision as to which services should be value-added is to some extent arbitrary and changes over time. The probable result is that free services will be degraded, and there will be reputational damage to AustLII and its Universities. Use of content in paid value-added services might also conflict with some data licences.
- ***Exclusive arrangements with third parties*** Building complementary services on an exclusive basis for one legal publisher would pose dangers to AustLII's reputation and to its University position. We have concluded it is better to provide the same services to any legal publisher on the same funding basis.

## 5 Conclusions

### AUSTLII'S REALISTIC RANGE OF OPTIONS

The previous sections of this paper have explained how, in 2007, AustLII's contributor funding was increased to nearly A\$1 million, and this level has been increased in 2008. The number of significant (\$5,000 or more) contributors was tripled, providing a broader base for long-term stability of funding. AustLII obtained minimal grant funding for 2007 (the cause of its revised approach to funding), but in 2007 and 2008 it obtained a number of major new competitive grants, sufficient to provide about A\$0.5 million for 2009 and 2010. Some of the contributor funding in any given year is 'industry partner' funds applied to research grants and therefore unavailable for maintenance. Contribution funding available for maintenance will have to keep growing funds as services expand.

There seems little prospect of AustLII obtaining a single funding source, or even a small number of major sources, to pay for its Australian facilities. Nor is it realistic for AustLII to consider any form of advertising or paid use (in full or in part) models, because of the constraints within which it operates.

The only realistic option for AustLII is what we could call a 'multi-contributor' model, but is really a mix of different business models. Part of its model will continue to be based on competitive grant funding (from both academic and 'public purpose' sources), with the pressure that this imposes to continue to innovate to provide new services. It appears that 'contributor' funding can, if properly managed, continue to provide the minimum of about A\$1 million per year that AustLII needs to maintain its existing databases. However, the expression 'contributor funding' obscures what are in fact quite a variety of business models, few of which have been fully developed by AustLII. None have much to do with being a mendicant.

A multi-contributor funding model is complex and requires considerable resources to service, but it has advantages. It may provide more stability than reliance on one or two major sources, because it is able to cope with loss of any individual stakeholder or group of stakeholders. It also provides more independence from the wishes of any individual stakeholder.

AustLII's financial position is still not certain enough for 2009 onwards, and broader distribution of legal profession, government and business contributors is needed for full stability. However, a full time External Relations Manager was appointed only in July 2008. AustLII will continue to develop the approach to sustainable funding it has taken in 2007-08.

## POSSIBLE RELEVANCE TO OTHER LIIS

The models on which LIIs are funded vary a great deal, and AustLII's 'multi-contributor' model is likely to be of varying relevance to them. BAILII is similar in having multiple contributors, though fewer. The LII (Cornell) annually solicits funds from the public. Most LIIs have had a considerable deal of academic funding and academic institutional support (particularly HKLII, PacLII, AustLII, LawPhil and BAILII). CanLII is funded primarily by the Canadian legal profession, whereby every Canadian lawyer provides nearly C\$30 per year via their professional associations. Other LIIs have not been able to replicate this. International aid and development agencies have made significant contributions to the development costs of PacLII and SAFLII. A small LII like CyLaw is a personal project. NZLII still lives on 'the smell of an oily rag' (a NZ expression) and help from other LIIs, while it searches for longer-term funds. Kenya Law Reports is trying to move from a model combining government funding with subscription income to one which does without subscriptions. There is no single path to sustainable free access to law within a country or region, but that doesn't mean it can't be done. It has been done with ever-widening scope for nearly fifteen years. There is not one formula, but as with many other aspects of open content, there are many non-business models by which numerous stakeholders can be engaged.

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### References

AustLII (2007) *Annual Report 2007* at <[http://www.austlii.edu.au/austlii/reports/2007/AustLII\\_AR\\_2007.pdf](http://www.austlii.edu.au/austlii/reports/2007/AustLII_AR_2007.pdf)>

AustLII (2000) Mission Statement, in AustLII *Annual Report 2007*, pgs7-8

Dixon, R (2008) *A review of business models for AustLII*, June 2008, Handshake Media Pty Ltd

Greenleaf, G (2008) 'Legal Information Institutes and the Free Access to Law Movement' *GlobaLex*, February 2008 at <[http://www.nyulawglobal.org/globalex/Legal\\_Information\\_Institutes.htm](http://www.nyulawglobal.org/globalex/Legal_Information_Institutes.htm)>

Greenleaf, Chung and Mowbray (2007) 'Challenges in improving access to Asian laws: the Asian Legal Information Institute (AsianLII)' (Greenleaf, G, Chung, P and Mowbray, A) (2007) *Australian Journal of Asian Law* Vol 9 p152