Managing the Magic Standards for Australian Electronic Legal Information

Sandra Davey. Manager, Foundation Law, Law Foundation of NSW

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The views presented here are my own and do not necessarily reflect those of any organisations I am associated with.

Scope of Paper

The aim of this paper is to present an overview of the relevance, importance and benefits for Australian courts, in developing standards for the creation, maintenance and distribution of judgments in electronic form. It is written from the perspective that standards for electronic legal information in Australia, are now urgent and states a series of reasons as to why.

It also highlights the practical and business benefits in for courts by adopting consistent standards.

Without Standards

Before I get started, I'd like to have a quick think about what life would be like without standards. For starters:

- We couldn't talk to each other on the telephone.
- Snow on our television screens would be a feature not a bug!
- The prescribed degree of fineness for gold and silver would never be known.
- Shopping trolleys would continue to drive with all fours!!
- Everytime you bought a CD, you would need to buy a CD player that supported the CD.
- When we go to dinner, we would negotiate that in return for our meal, we have to either wash the dishes or give them your suit on the way out!
- And finally, none of our computers would be able to talk to each other (which means we couldn't dazzle anyone with wonderful overhead presentations).

From a legal information perspective:

- We couldn't cross-reference legal material with any real accuracy.
- We would continue to maintain numerous citation mechanisms.
- Courts couldn't electronically publish their decisions as soon as they are handed down.
- Australia's excellent international reputation for being progressive, smart and efficient, with regards to electronic provision of legal information, would be eventually disregarded.
- Costs for courts, government, the profession, and the public, would rise substantially in many areas including litigation, distribution, access, etc.
- Productivity of administration assistants and judicial officers is not maximised.
- The integrity and accuracy of our data is called into question.
- Publishers and distributors of legal information bear the brunt by working with inconsistent data, ultimately increasing costs for consumers.
- Courts are unable to own and subsequently control, their material.
- Internal research services could not take advantage of the cost and resource savings offered by standardising the material.
- And lastly, the Electronic Appeal Book could never be realised.

So, Why Standards?

According to the International Standards Organisation, ISO, standards are documented agreements containing specifications or other precise criteria to be used consistently as rules, and guidelines. This ensures that materials, products, processes and services are fit for their purpose. Standards contribute to making life simpler, and to increasing the reliability and effectiveness of the material and information that we use.

In addition to what ISO says, changes to the legal information environment that were not present two-three years ago, such as the take-up of electronic research tools and Internet access, by courts, government, solicitors, counsel, researchers and the public, coupled with people's increased understanding of, and reliance on, communications technology, mean that we must either visit or in some cases, revisit areas, such as the implementation of and support for, electronic legal information standards.

In the past courts have relied on third parties, publishers (in some cases, public funding) and so on, to fix and/or improve material provided to them. To do this, costs increase as publishers are required to work with inconsistent material. Peter Myer (1997:5) argues that "in practical terms, each publisher has to separately perform almost the same work on the source data" as each other. This is redundant expense that could easily

be avoided. This costs prevents many groups, including the courts themselves, government, and the public, from gaining access to the material.

With an increasing number of courts and legislative departments publishing electronically, the need for standards to ensure accuracy and integrity, is now urgent. Naida Haxton from the NSW Council of Law Reporting has raised these issues a number of times.

One colleague replying to a request for assistance with this paper replied:

"Once upon a time, there was error free reporting in law. (we can thank the likes of Naida Haxton from the NSW Council for Law Reporting for this — my comment). With the plethora of publishers now around... let's hope legal publishing does not suffer the same loss of standards as newspapers and magazines."

Prior to the development of the Canadian standard which I will talk about later, research was conducted by the Canadian Law Information Council which showed that it would be more effective, efficient and provide better access to law,[1] if judgments coming out of the Court were in electronic form, in a standardised format.

Attempts for the development of standards, have already been made, notably the work of Justice Olsson and his AIJA committee, the AIJA itself, Naida Haxton's Manual of Law Reporting, and more recently, the work by AustLII and Desktop Law. We have reached a stage now where this work needs urgent attention.

And lastly, the Council of Chief Justices Electronic Appeals Project has said that the most significant impediment to the introduction of an electronic appeal system is the lack of uniform standards across jurisdictions. They argue that without standards, there is little prospect of developing an efficient and effective electronic appeal system.[2]

Canadian Judicial Council

The Canadian Judicial Council and Canadian courts have recently gone through the process I describe in this paper. The result is a Canadian standard for the preparation, distribution and citation of Canadian judgments in electronic form[3] (available online).

In the introduction, the Council makes a number of points with regards to the need for standards.

Move from paper to electronic

In a paper-based system, consistency of approach is of relatively little importance. Consumers of judgments, including litigating parties, the profession, academia, publishers, journalists and the public at large, accept judgments from the court in a wide variety of formats. Traditions and practices have grown up over the years in many courts, depending on local custom, institutional practice, and the preferences of individuals.[4]

The print-on-paper world has been supplemented — and may well in the future, be supplanted by electronic text. Public demand for access to judgments in electronic form is increasing and courts and publishers are trying to respond to this increased demand.

It is here that standards become an issue. With the introduction of the computer, information needs to be prepared and communicated so that anyone may have access. The information age has spawned many detailed standards as a result. If courts, as the originators of judgments, do not adopt a common standard — at least at basic levels — then the result is a tangled web of confusion, expensive conversions, and limited access.

Who should publish?

Considering the purpose of the Standard raised a series of issues for some Canadian courts about their role. Is the court to become a publisher, responsible for preparation, enhancement, distribution and marketing of its own judgments? Is that not the role of the traditional commercial legal publishers?

With promulgation of this Standard, the Canadian Judicial Council did not suggest that courts compete with commercial publishers. But it does recognise that the courts must respond to the challenges and opportunities of the information age.

New technologies have made it possible for courts to disseminate their judgments, in addition to using commercial publishers. For example, the High Court of Australia now makes its decisions available on the Internet, as do over 39 other Australian courts. This kind of effort in no way prevents the commercial publication of judgments. But it does meet the public's right to find and inexpensively retrieve the court's latest decisions. From a court's perspective, dissemination in electronic form has the potential to save cost (eg the costs of photocopying, mailing paper, etc), while at the same time, expanding public access.

Whatever the short or long term economics, the fact is that some courts need and want to disseminate their judgments directly, and others are quite satisfied to provide judgments to publishers for electronic dissemination (whether or not courts have exclusive arrangements with commercial publishers is a matter not addressed in this paper). Without standards, the former approach is quite fruitless, and the latter is made more time consuming and expensive for the consumer and user.

There is much work already done by organisations such as the Canadian Judicial Council that Australian courts can benefit from. It would be unwise, for example, to develop a set of Australian standards, without first taking the opportunity to learn from the Canadian experience.

Why is Standardisation Needed?

Slipping away from the law for a minute, ISO believes that the existence of non-harmonised standards contributes to so-called "technical barriers to trade."[5] Export-minded industries have long sensed the need to agree on world standards to help rationalise the international trading process. Telephone companies are another example of this.

International standardisation is now well-established for many technologies in such fields as information processing and communications, textiles, packaging, distribution of goods, energy production and utilisation, shipbuilding, banking and financial services. The main reasons are worldwide progress in trade liberalisation:

"Today's free-market economies increasingly encourage diverse sources of supply and provide opportunities for expanding markets. On the technology side, fair competition needs to be based on identifiable, clearly defined common references that are recognized from one country to the next, and from one region to the other. An industry-wide standard, internationally recognized, developed by consensus among trading partners, serves as the language of trade."[6]

Sector Relationships

No industry in today's world can truly claim to be completely independent of components, products, and rules of application, that have been developed in other sectors. Bolts are used in aviation and for agricultural machinery. Welding plays a role in mechanical and nuclear engineering, and electronic data processing has penetrated all industries. Environmentally friendly products and processes, and recyclable or biodegradable packaging are pervasive concerns. Electronic legal information is incorporated into many different systems including the databases and Web sites of commercial and free-to-air publishers, knowledge management systems and electronic appeal books in law firms, databases and intranets in government departments and courts, and the hard drives of just about every legal researcher.[7]

Worldwide Communications Systems

The computer industry offers a good example of technology that needs to be quickly and progressively standardised at a global level. ISO's OSI (Open Systems Interconnection) is the best-known series of international standards in this area, and provides a platform, which enables the seamless connectivity we see on the Internet today. Full compatibility among open systems fosters healthy competition among producers, and offers real options to users since it is a powerful catalyst for innovation, improved productivity and cost-cutting. Cutting edge development in the Internet software industry is indicative of this.[8]

The Benefits of Standards

Decision-makers and users need to understand the benefits of any actions they take. The same applies to those who decide on issues relating to standardisation in electronic legal information. The ultimate rationale is that standardisation is good business practice. In addition, there are some specific advantages in standards implementation:

- Increase market access and acceptance.
- Reduce time and costs in product development.
- Reduce administrative and material expenses.

Industry-wide standardisation is a condition that exists within a particular sector when the large majority of products conform to the same standards. It results from consensus agreements reached between all players in that sector, in our case, courts, users (public and private), publishers, and government. Parties agree on specifications and criteria to be applied consistently in the choice and classification of material.

The aims are to facilitate exchange, increase productivity and efficiency, and reduce costs, through:

- Enhanced product quality, innovation and reliability at a reasonable price.
- Greater compatibility and interoperability of material across jurisdictions.
- Simplification for improved usability.
- Facilitate competition in the legal publishing market.
- Reduction in the number of models, and thus reduction in costs.
- Increased distribution efficiency.
- Ease of maintenance.
- Increased productivity.
- Reducing trial and error, and unexpected costs.
- Removing the need for extra staff to validate information and material.
- Maximise the investment in software and training.

Standards are a vital issue for business. There's no doubt about it, standardisation helps businesses stay competitive and maximise resources. Standards eliminate excess costs, boost productivity, and satisfy consumer needs. Far from impeding business, standards actually break down barriers to trade, provide industry stability, and encourage commerce. Standards are the foundation for innovation, so they hasten the rate of implementation of new technology. Standards and technology are natural partners to the strategic marketing plan, which is clear evidence that standards should be the concern of judges, registrars, and business or finance managers, secretaries and administrators, as well as of the information technology staff.

Justice Olsson in his paper, Guide to Uniform Production of Judgments, released in 1992, said that it,

"Was felt that such uniformity would maximise the possibility of, if not be vital to, the effective development of a possible national system and, at the same time, found a basis for promoting the most efficient system of researching material of this type, as well as facilitating internal recording and dissemination of the relevant information within the jurisdiction in question" (1992: Introduction, 1.2).

In addition to the advantages just mentioned, there are many benefits for courts resulting from the

implementation of standards in electronic legal information.

- Reduced costs in creation, maintenance, use, storage, and distribution.
- The integrity and accuracy of the material can be assured.
- Courts own the material and they own the value in it.
- Maintaining a standardised set of data internally can provide a powerful research service, maximising staff, time and financial resources.
- Increased access to material by all players including the judiciary, government, researchers, librarians, the profession and the public.
- Significant reduction of delay between the time a judgment is handed down and its publication.
- Enhance capacity to publish in print and electronic media.
- Ability to search full text and to quote accurately without re-keying.
- Courts can develop and implement electronic appeal books.
- Long term benefits in light of recent theory and practice in knowledge and intellectual asset management.
- Long term benefits in light of technological improvements and development. Standards will ensure smoother transitions for data into new technological areas.
- Consumer confidence through conformity assessment. Conformity assessment establishes confidence in the products and services that courts can market to buyers and/or distributors.
- Publishers and distributors of legal information are able to provide more efficient services, allowing them to concentrate on what they do best, the value-add (not raw distribution).
- Standards encourage innovation, benefits and positive consequences for the end user.
- Public access to legal information re-asserts our democratic intentions.

Development of Standards

The development of standards requires the participation and involvement of key players. Standards require consensus, endorsement, and compliance. Obviously the courts are the key players. Commercial and free-to-air publishers and the users (the public, the profession and librarians) are the other main players. The Legal Information Standards Council is an example of one of these public players.

LISC was setup initially as a communication and exchange forum for online legal publishers. Its objectives are:

- Discuss and make recommendations for the co-ordination and provision of electronic legal information.
- Ensure that resources used in the delivery of online legal information are expended efficiently and effectively, to the best advantage of the providers of the information, and of the community who use it.
- Assist with the development of technical and publishing standards for electronic legal information.
- Provide a forum for communication and collaboration amongst key online legal publishers.
- Convene sub-committees within the Council for specific project responsibilities.

To ensure maximum participation from players in the legal publishing market, the Council currently includes all free and commercial primary legal publishers, and other parties interested in primary materials including Aunty Abha's, AusInfo (AGPS), Australian Law Librarians Group, Council for Law Reporting, Judicial Commission of NSW, Law Council of Australia and Parliament of NSW. In addition, organisations with a particular focus on secondary legal information and services include the Dept. Fair Trading, Legal Aid Commission of NSW, the Legal Information Access Centre, NSW Attorney Generals Department, National Association of Community Legal Centres and Redfern Legal Centre Publishing.

Another objective for LISC is to assist courts and providers of legal information, by having one co-ordinated voice which courts and government can deal and work with. Rather than impose recommendations and industry solutions, LISC seeks to assist those already working in the area by providing the co-ordinated approach mentioned above and by sharing knowledge, experience and resources.

Standards for Electronic Legal Information

Three areas for the development of standards in electronic legal information spring readily to mind; data, accessibility and citation standards. The data and citation standards fall in line with the recommendations suggested by the Council of Chief Justices Electronic Appeals Project.[9]

Data

It is not the scope of this paper to suggest what the data standards should be; though consideration of the following would be useful:

- The structure and presentation of each document are two separate components that need to be considered both independently, and in relation to each other.
- That the data ought to contain additional information that is best provided at source, such as catchwords.
- That the data ought to be in an authoritative form, including acceptable citations and numbering.
- If courts publish direct online, standards to ensure accuracy and integrity need to be developed.

- The chosen format should adapt well to computer based translation and electronic distribution.
- The chosen format should be independent of particular vendors and proprietary technologies, which may be superseded by technological change or commercial fortune (Myer, 1997:5).
- There are ways to satisfy the requirements and desires of the people involved with the material, ie the judges, secretaries, the users and the publishers.

In addition to the benefits mentioned previously, advantages for the courts by adopting consistent data standards include:

- The ability to maintain powerful internal research tools and services.
- Costs in creation, maintenance and distribution are reduced.
- The short and long-term benefits of knowledge management.
- Ability to sell the data because of the value built into the material.
- Speeds up the production and reporting processes.
- Everyone knows what everyone else is on about which means an increase in productivity.

The Australian Institute of Judicial Administration and the Canadian Judicial Council have done a lot of work in this area. It may be wise to consider this in light of our own national requirements.

The success of the Canadian's adoption of the new standard is the way in which they managed the project. They saw seven key stages to successful implementation of the standard:

- Identifying the need.
- Finding the sponsor.
- Building on leadership.
- Building consensus.
- Adoption by Council.
- Promoting adoption one court at a time.
- Dealing with objections.

Martin Felsky in his paper to the 1998 New Zealand Law Librarians conference covers these issues in great detail.[10]

Some crucial elements to the Canadian standard that ensured its success include:

- The standard is voluntary not compulsory. Although compliance is encouraged, it is not enforced.
- The courts were encouraged to adopt as much or as little of the standard as they could manage, but to not reject it as a whole because they might disagree with one small bit.
- The standards are not set in stone. It's a dynamic and fluid document.
- It received wide ranging input from all players.
- Implementation of the standard did not have to happen by a set date.
- The standard is practicable. It is something courts can reach and is not out of their realm financially or most importantly, technically. For example, it works as well from a DOS machine as it does from a recent Windows 95 computer.
- The courts do not have to do a retrospective conversion of material.

Martin Felsky spoke of the need for the standard to be sponsored by someone. In Canada it was the Canadian Judicial Council, a Federal body. If we apply this locally, it would seem wise that the Council of Chief Justices (CCJ) Technology Working Party would form the majority of this group.

In addition to this, the standard needed a champion; a leader. The Supreme Court of Canada, the highest court in the country, was that champion. They were the first to adopt and implement the recommendations. Again, the analogies with Australia are similar. It is the excellent work of the High Court of Australia, with its move to paragraph numbering and medium neutral citation, which will hopefully encourage other courts to adopt similar strategies.

The standard was developed by forming a working party with representatives of all players; courts, government, researchers, users (secretaries, the public, the profession, etc), publishers, and librarians. It was drafted, re-drafted and re-drafted again. The final version took into account, all views, opinions, and submissions of the key players, stakeholders and interested parties. This ensured that final endorsement and adoption would prompt little debate.

The Standards were endorsed by the Canadian Judicial Council in June 1996. A recent survey of Canadian decisions by the Editor in Chief of Quicklaw, Canada's main commercial legal service, found that of the 27 Courts that are represented in the Quicklaw database, 17 had finished implementing the paragraph numbering system while the other 10 although completely committed, were still in implementation phase. To the extent that the CJC Standard proposed a format for the preparation of judgments in electronic form, it has been almost universally adopted by the superior and federal courts across the country.

Accessibility

Public Access

The Internet and the Web have radically reduced the cost of publishing and distributing information, and courts and government departments are adopting the Internet as a key communication and distribution mechanism.

Access to government-held information is essential to secure a proper level of knowledge in the general population about democratic processes. It is also a necessary

requirement for the democratic control of the exercise of government authority.

Australia has an international reputation in the provision of electronic and publicly accessible law. Nowhere in the world do you see a more progressive and co-ordinated approach to the electronic provision of legal information. AustLII and its funders, and the Federal Government's SCALEPlus service, indeed the Australian courts, are to be commended for their respective initiatives in these areas.

The Australasian Legal Information Institute, or AustLII as we know it, was congratulated in the first UK Court of Appeal judgment to reach the Internet. Quoting from this decision, the Court said:

"If this country was in the same happy position as Australia, where the administration of the law is benefiting greatly from the pioneering enterprise of the Australasian Legal Information Institute (AUSTLII), we would have been able to make this judgment immediately available in a very convenient electronic form to every judge and practitioner in the country without the burdensome costs that the distribution of large numbers of hard copies of the judgment will necessarily impose on public funds."

Australia is in a unique position to build on this reputation by continuing to develop electronic legal information services. In the Queensland Court of Appeal's annual report for 1994-95, the Court noted:

"Free electronic access to judgments would be consistent with an appropriately open and accountable judicial system and the Court would benefit if such a resource was used by legal practitioners, and unrepresented litigants, to improve the quality of arguments presented to the Court" (1995:140).

Access rights for each citizen to the public's case documents are primarily based upon the democratic ideal, because that promotes effective public debate and the control of the public exercise of authority.

Publication on the Internet by courts and government departments represents an important step because it contributes to larger dissemination of knowledge about the political and administrative authority, which can be a strong incentive to democratic participation.

Such publication not only eases the practical workload of dispersing this information, but also is likely to increase the number of copies that are dispersed.

Publishing Standards

Providing law online for free, is one step in the access chain. Ensuring that once the material is online, it is in a format that can be accessed and read by anyone with an Internet connection, is the next. I now make reference to publishing standards for Internet or Web based information. These standards have been developed by the World Wide Web (W3C) consortium, which consists of a wide variety of members including Netscape, CSIRO, Federal Dept. Communications, Information Economy and the Arts, Microsoft, Kodak and Reed Elsevier (owner of Butterworths). Without such standards my Web browser would not be able to interpret the information, and that includes the laws of Australia, whether free, or available through a commercial provider.

Standards for Web publishing have been with us for some years. The recent HTML 4.0 standard for example, provides a set of rules and recommendations to anyone publishing information on the Web. One core component of this standard is the accessibility guidelines. These guidelines ensure that information on the Web can be read by everyone, including people with disabilities such as visual impairment, and those who use low-end technical equipment.

It was with some surprise that I discovered recently a number of very prominent Federal and State government department Web sites, failed on a series of accessibility tests. This means that a significant percent of government information is currently inaccessible to both people with disabilities, and to people who do not use the latest and greatest technological devices when accessing the Internet.

One excellent example of a government department who conforms to the HTML standard is the NSW Attorney-General's department, and they should be congratulated in the approach they have taken on accessibility. Courts can easily encourage Web site accessibility by ensuring that those who develop their sites do so in accordance with the accessibility standards written by the W3C.

Citation

The citation debate has been with us for some time. It was a key area for the Canadians when they developed their standards and recommendations. One of the key components to a medium-neutral citation is the widespread support that paragraph numbering of judgments be implemented. It is not feasible to ask publishers to each apply their own paragraph numbering scheme to the raw text received from courts. The result would be a significant risk of inconsistent paragraph numbers appearing in different copies of the same judgment, online or in paper form. It would defeat the purpose of paragraph numbering and will foster confusion.

The Need for Citation Reform

- There is an increasing reliance on electronic judgments. Judges, solicitors, barristers and anyone involved in legal research, need a way to cite judgments that are not based on the traditional print based page numbers. Paragraph numbering is needed because page numbering is print-medium-specific (and specific to particular publishers), and irrelevant to computerised judgments.
- The legal community is relying increasingly on electronic media to find case

law. If we are to benefit from this technology we need to be able to cite the material we find.

- Requests for access to unreported decisions have increased and the distinction between unreported and reported judgments has been somewhat blurred by the reality of electronic law publishing.
- A generic case identifier would allow all searching tools to be used, without having to resort to proprietary case identification schemes. This is a benefit for several reasons:
  - it gives no publisher advantage over any other;
  - it adds convenience of reference for those who may not have the particular volume cited;
  - it permits retrieval if the case is accessible directly from the court or reproduced in a publication which is not part of the current citation system;
  - it acts as an effective cross-referencing tool for parallel cites;
  - it need not replace any proprietary system of citation;
  - it is compatible with paper-based and electronic publication of cases.

The Benefits of a Medium-Neutral Citation System

- Writers would be able to cite other decisions without making assumptions about the particular publications available to their readers.
- Readers would be able to find decisions cited in whatever 'court reports' they have at hand (print or electronic).
- The creation of automated hypertext links in databases, and searches would be enhanced greatly.
- Potential copyright difficulties in citation use would be avoided.
- The official citation for a case will be known as soon as a Court or Tribunal releases it.
- Most print publishers could also continue to use their own parallel citations, to indicate their own selectivity, ordering and print volume location.

Conclusion

It is clear that there are many advantages for courts and their users, in adopting consistent standards with regards to the creation, distribution and citation of judgments in electronic form. In addition to data and format standards, a whole murky area is opened up when courts publish directly online, and that murky area is the accuracy, integrity, selection and editing of the material. This is an area that requires close consideration and attention.

It is also clear that all players must be involved in the process. I am convinced that in order for compliance to be successful, some of the most important players are the users, the secretaries, and the administration people, who would benefit greatly from standards and who, without some sense of participation and ownership, are unlikely to conform. In addition, industry has a lot to contribute both in experience and resources. Australian legal publishers would greatly welcome standards for primary legal information, as would law firms, librarians, solicitors and barristers, who now increasingly rely on and use electronic information. Bodies such as the Legal Information Standards Council are ready and willing to assist.

The AIJA report in 1992 said that the modest time and effort required "will be more than offset by the practical benefits arising from the resultant facilitation of legal research, particularly in relation to recently published decisions" (1992: Conclusion, 3.1).

With standard atmosphere, standard bred, standard deviation, standard error, standard gauge, standard lamps, standards of living and standard time, it is clear that standards play a large part in our society. Standards work because they are taken as an approved model with many benefits and advantages. It is hardly surprising then that there is such as strong call for standards in electronic legal information.

Internet Links, References and Thank You's

Special thanks to Martin Felsky and his paper on Canadian standards. A significant portion of that document has been used here. In addition, special thanks to Professor Dag Wiese Schartum a significant portion of this paper was also used in this paper.

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Standards Australia.

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