

# Internet Newsletter for Lawyers

By Delia Venables

September/October 2005

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## Chambers Without Walls

By Neil Goodman-Smith

BarristerWeb, [www.barristerweb.com](http://www.barristerweb.com), was established in 2001 to provide solicitors and other professionals with easy and cost-effective access to a wide range of legal expertise throughout England and Wales. It has proven to be a success and is now one of the largest sets of barristers chambers in the country. BarristerWeb has over 80 barristers and offers the services of a traditional chambers but with barristers spread across different geographical locations and accessible globally over the internet. The opportunity to use that expertise on advisory matters has also become available to the public generally.

We have specialist practice groups covering criminal and public law, tribunals and inquiries, family law, civil dispute resolution, business and enterprise, alternative dispute resolution and international work. A wide range of cases is dealt with.

### Management and structure

Our administrative offices are in Milton Keynes, but the barristers are located nationwide or indeed overseas. They do not pay any rent and they pay only a small annual licence fee for the software. They contribute to the running of chambers by payment of commission on work received and managed for them, with tapering rates for high earners.

Management of chambers is through Heads of Chambers, Chambers Manager and Senior Clerk. The barristers are thereby free of involvement in chambers committee meetings. This can be seen as a major advantage! Joint Heads of Chambers are Sir Nicholas Bonsor Bt and Tim Wallis.

Chambers is fully constituted and approved by the Bar Council. Members may be full members working exclusively for BarristerWeb or dual members with another chambers. They may also be a sole practitioner running their own practice independently of BarristerWeb. Dual members can supplement their practice by taking additional work from BarristerWeb. Full members have to be more than three years call, as an internet chambers cannot provide the face to face mentoring required for under three year call barristers and pupils, although they can be dual members with mentoring provided by their primary chambers.

The flexibility of the internet structure also allows us to administer other chambers where the members also become members of BarristerWeb. For example Palmyra Chambers in Warrington are part of the BarristerWeb Group; their telephones are answered by BarristerWeb and all their practice is administered through BarristerWeb.

Not having to pay a fixed monthly charge for overheads enables barristers doing other (non-legal) work to continue with their part-time practice at the Bar. Some of our part-time practitioners include mothers with family commitments, law lecturers, a tax advisor, a pharmacist, a doctor of medicine and a member who sits 2-3 days a week with a judicial appointment on a tribunal.

Clients can search through the website to find a barrister online. Searches can be by barrister's name, area of law or location. Clients include solicitors, local authorities, legal departments, insurance companies, licensed access and public access clients. Instructions are accepted by telephone, post, DX or fax or through the website.

We market our chambers and our barristers through the website, through being in the legal directories (including The Legal 500) and through advertising in the Courts and Agency Directory, Waterlows and LawyerLocator. We are also an accredited chambers for CPD lectures and a number of our barristers are regular lecturers.

## Software and online tools

The barristers are able to link to the latest Chambers Management Software, Inquisita Law, [www.inquisita.com](http://www.inquisita.com), to which many of the leading sets of chambers are now changing because of its power and ease of use. As a Microsoft.net product it enables barristers with their own username and password to access their diary and fee information over the internet. They can also enter their own tasks, holidays, or bookings from other chambers so as to give a clear picture of their availability.

Conference facilities are available at chambers or at local professional clients' offices or at serviced offices available for hire. For example, Regus, [www.regus.co.uk](http://www.regus.co.uk), can provide outsourced offices at 90 prime locations across the UK and many others abroad.

Papers are generally sent to barristers direct and many have personal DX boxes. Efax is particularly helpful, [www.efax.co.uk](http://www.efax.co.uk), especially for late instructions. 100 pages received at 6 pm for a case the following day is faxed in the normal way by solicitors to our efax telephone number but instead of being printed out on our fax machine (far from where the barrister happens to be) it arrives on the clerk's computer and is then emailed to the barrister for him or her to receive directly. This saves paper as well as time.

Textanywhere, [www.textanywhere.net](http://www.textanywhere.net), is useful. We type text on the computer, such as the details of a case we are trying to cover, and can text it simultaneously to as many of our barristers as we wish, simply by ticking an onscreen box next to each barrister's name and mobile number.

We use conference calls to save travel time and cost for barristers in specialist groups to discuss projects. We have used Premier Conferencing, [www.premconf.com](http://www.premconf.com), but a cheaper option is LegalTx, [www.legaltx.com](http://www.legaltx.com). As well as lower cost calls and line rentals there are free "legal to legal" calls which, as more lawyers join the network, will reduce the overall office telephone bills.

Another useful communication tool we have been experimenting with is Groove, [www.groove.net](http://www.groove.net), from D2i. Groove is a virtual office with desktop collaboration software for secure discussions, file-sharing, projects and meetings. There are many possible uses for this system. For example, our bookkeeper works from home and we can share information in a secure workspace and see online updated information as it is entered. A barrister can keep all precedents, templates and case law in another secure workspace, which can be accessed over the internet. New workspaces can be created to give access to designated persons, for example, an instructing solicitor could access the document online to collaborate on drafts. We can also see a use where barristers wish to return papers at short notice to colleagues in chambers; instead of having to courier or fax them they can be accessed from a workspace and printed off. If solicitors, the CPS and other major providers used the system it could speed delivery of briefs.

## The future

We think the virtual chambers is here to stay as there is no need to maintain expensive premises when conferences can be managed at solicitors' offices or rooms rented at serviced offices and libraries can be obtained online.

We are looking at the challenges of Quality Mark for an internet chambers. On the one hand, with the Treasury driving down costs with competitive tendering, our concept is attractive to the Legal Services Commission. On the other hand, where barristers are dual members as well as

being geographically distant, it may be more difficult to show that they are complying with required standards. We may therefore discuss having a separate Quality Marked team within chambers.

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## CPD Anywhere: live online seminars by Jacqui Gilliatt

Having recently presented my first live online seminar for Cpd4Lawyers (see [www.cpd4lawyers.com](http://www.cpd4lawyers.com)), I am fired up with enthusiasm for the format.

### Attending an online lecture

It's easy to attend an online lecture whether from home or the office. Many firms watch together, using a projector and screen. To attend, all you need is a computer with a sound card, an Internet connection and a headset or speakers. A microphone is not essential. Without one, you can still enjoy the presentation and can ask questions using the text message facility but having one enables you to discuss issues with your fellow delegates and ask questions. Microphones and headsets are available at many stores including PC World, Staples and Currys, from as little as £6.

Once you have booked a place at your virtual lecture, you are provided with a link to a simple step-by-step wizard which sets your computer up to attend the lecture. Notes and slides are emailed as attachments for printing out in advance of the lecture. On the day, all you have to do is click on a link to the lecture and sit back and enjoy it in the comfort of your own surroundings. No unnecessary travelling or hanging around, no dress code, no need to tidy up the office or even be in the office.

Afterwards, a recording is available to re-visit the lecture. Anyone who cannot attend on the night can purchase the online recording with notes, the CD pack or notes only.

### Presenting an online seminar

The online approach was particularly attractive as a method of delivering training to me as a barrister as it meant I had only to make sure that I could be back in front of a computer in time for a 6pm start rather than having to book myself out of court for the whole day. In addition you can earn double points for *giving* the presentation which counts as an accredited activity. There are also the usual benefits of any public presentation in terms of publicity for yourself as an expert in your field and payment for your services.

CPD4Lawyers uses a software package designed by Horizon Wimba. Training is delivered online at your own convenience (in my case by a lovely lady in the US) which gives you a good sense of what the online attenders to your own session will be experiencing. In addition Anne Smithies of CPD4Lawyers can offer more tailored training and practice sessions as necessary. I prepared my notes as a Power Point presentation. I had never used Power Point before but managed to put my handout and slides together in a couple of hours. The classroom included a photograph of me but it is possible to use a web cam and have live video. That's for the future!

*Continued on page 10.*

## Be More Efficient, Using the Web

By Allan Carton, *Practical Solutions*

Widespread, reliable and affordable broadband access to the internet at home and at work has created a host of opportunities for better and easier ways of working and for communicating with others. Here are some examples of how the internet is making legal practice more efficient.

### Email integrated with case management.

Law Society research shows that 30% of clients are already willing to receive email advice, increasing to 46% for conveyancing clients. Despite this, many firms do not ask clients if they want to be kept in touch by email, mainly because lawyers find it easier to ask their secretary to send a letter than use their own email! If email were properly integrated with case and matter management, any fee earner (whether or not they can type) could produce documents based on templates and could email these to the client, much faster than dictation.

### Email templates

It has proved difficult to get lawyers to compile consistent documentation in most areas of work, but there is much more consistency now than in the past. However, few firms have yet produced standard email templates, incorporating data fields in the same way as in template letters that allow lawyers to fire off routine emails without much typing.

### Receipt of instructions from clients and introducers

Used mostly (so far) for conveyancing and personal injury work, this cuts costs and can get a case moving faster by allowing you to receive and import all information about the case direct into your case management system. Lawyers can start the legal work immediately without the need to key that information into the system.

### Automated progress updates for clients

Until now, the availability of progress reports online has proved of most value to estate agents, lenders and brokers. It seems that members of the public do not use this information a great deal yet but this may be because of the absence of meaningful information on the site beyond bland key stages and on failing to tell clients about the service. To see how this can work, see [easier2move.co.uk](http://easier2move.co.uk).

### Online management reports for introducers

When you are handling multiple cases for a client or an introducer, they want regular management reports which have traditionally been delivered on paper or by email. It is much better if they can log onto their secure area on your website to take see the live data any time they want. This information can also include billing information and performance statistics, which are vital to their business.

### Access your own system from anywhere

Being able to access the files in your office from home

gives you the freedom to work where you want, when you want. Wireless technology allows you to use broadband access from train stations and on trains, from hotels and at conferences, as well as from any room in your office or house, without obtrusive cables. Thus, you can check and reply to your emails anytime. To do this on a Virgin Train, for example, you just need a laptop with built-in wireless capability or an 802.11b wireless networking card. For more on this, see [www.virgintrains.co.uk/travellingwithus](http://www.virgintrains.co.uk/travellingwithus).

### Get typing done anywhere

Digital dictation can now be dispatched to or accessed by your virtual typing pool. High speed broadband allows your typists to work effectively from home or abroad, letting the staff in the office do more in dealing with clients.

### Land Registry

All aspects of processing a conveyancing transaction will be easier if done electronically in the future. It is already easier and faster to do online official searches, view the Registry's day list and to initiate simple changes to the register online. Electronic charges and discharges take this further.

### Conveyancing searches

Conveyancers are integrating online searches through the likes of Transaction Online and Searchflow. Searches are being returned faster from the authorities who are gradually getting online and search forms can be completed automatically from the data already entered in your case management system, reducing administration and cost.

### SMS text messaging

This can be activated automatically through a provider like [www.24X.com](http://www.24X.com) when a task is completed in your case management system. Thus, your client or estate agent can be told immediately that contracts have been exchanged and a completion date has been fixed or you can tell the broker who introduced the client that the deal is done.

### Collaborative working

This is where you create a secure area on your website or on a third party's web site and then upload documents, notes, project plans, images and whatever files are relevant to a particular project. You then allow multiple parties to access the area with appropriate rights to view and/or edit documents and to monitor all activity in this area. These systems are already used very successfully in commercial transactions, but they could also be used on other types of legal work provided potential users are consulted, the interface is easy to use and the right information is included.

### Live chat

To improve communication with regular contacts and members of your team that are not based in your office (or even if they are) there are tools like MSN Messenger that allow you to stay in contact all day and send each other notes and messages very informally.

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### **Digital images**

I recently tried to buy a 35mm film for my camera in a Cotswold village, only to be told they do not stock it any more! Photographs of accident and crime scenes, properties (and just about everything else) are now mostly taken with digital cameras and can be exchanged online.

### **Video conferencing**

This is now available, but there is still some way to go for general public use. However, criminal firms are becoming more familiar with this type of technology as it is being used increasingly in the courts.

### **Website content management**

A lot of market research can be done on your own website by making it more interactive, with simple registration systems and downloadable documents (free or paid for). By learning what people are looking at, you can decide what they are prepared to pay for, which may be your next step, with an online payment system.

### **Legal research**

There is greater availability of more up-to-date material, precedents and other tools from legal publishers who are now providing much more support than could ever be found in a hard copy of a book.

### **Forms updates**

Forms can be kept completely up to date and published on your intranet.

### **Remote backup**

This enables you to store copies of your computer files at a secure server off site and to recall any documents at will without having to worry about changing and replacing tapes or taking them home every night.

### **Online newsletters**

You can work collaboratively with other colleagues and contacts to produce frequent newsletters, bulletins and alerts and then send these out by email. You can work on the stories any time, wherever you are, because they are stored securely on the web.

### **Hosted practice and case management systems**

Because high-speed access to the internet is now affordable, it is beginning to make sense to use, for example, a case management system that runs outside your office through the internet. It can make maintenance and administration of the system easier because the supplier has more expertise than a legal firm and it can make it easier to put these services online. However, these types of system are still in their early days.

### **A vision of the future**

Your desktop, wherever you are, is your point of access to all the information you need from your own systems and from external sources. Incoming paper is scanned as a matter of routine and allocated to the right place, so you can now deal with it as you wish.

Routine responses are by email, using templates incorporating any information already in the system, so you don't have to type much at all, unless you want to. If you want to dictate, you do it digitally and tell your typist working from home that it is ready. It can then be picked up through online access to your office and the completed work delivered back to you for approval.

There is less paper (and less scanning) because your clients contact you by email. Documents are sent as Word

files and PDFs that you can save onto your system, or data is sent on a new matter that you can import into your system (photos and all) to open a new file immediately. Not far down the road, PISCES data in consistent XML format will be sent both ways through the internet, from lenders and the land registry to lawyers and back again, getting rid of paper and manual administration.

When you draft an agreement, you can post the document on the secure area that has been set up for the project and send a message to your client and all parties to tell them the document is there. Each has different rights: some can only view the documents and others can amend and save a new version, but the amendments are recorded.

The client has their own secure access to reports on all the cases and matters you are handling for them. You use that when appropriate; so when you are doing legal research on the web and you find material that might be of interest to them, you drop it into their area and send them an email to tell them it is there, building up a bank of relevant material for them without cluttering their desk (virtual or real). Provided you give them good material, you are developing a relationship they will not want to break.

While you are working from home in the evening, you can see from MSN Messenger that one of your colleagues or clients is also online, so rather than call them for a snippet of information, you can ask them for it online to get the last piece of information you need to finish off an advice. They point you to the file on your system or on the LexisNexis website, so you cut and paste the information you want to finish off the advice. Then you email it to the client so it is on their desk when they get into the office in the morning.

The same general ideas apply to higher-volume work. Incoming information can be viewed on screen, prompted by entries in your online diary and routine responses can be produced using template letters which pull in data and attachments that are already on the system.

With this type of flexibility and culture in place, a firm can comfortably increase revenue by plugging into any online source of new business that may come along, for example servicing enquiries generated from the Sainsbury website or responding to videoconference enquiries from the employees of a corporate client that recognises the value of helping their employees on legal issues.

### **Getting there**

Over the past 20 years, we have learned that it is not the technology itself that creates a competitive advantage, but the way people use it. You need a vision of where you are going and how fast you want to get there. You need a good IT and communications infrastructure and good keyboard skills throughout the firm (but structured templates and digital dictation should help here). Talk to your clients about what they would like you to do for them, particularly as they become more familiar themselves with internet-based services and report back to clients and employees about new initiatives and successes (and problems) to keep the momentum going.

*After 10 years in private practice, Allan Carton moved into management consultancy in 1990 and launched Practical Solutions [www.inpractice.co.uk](http://www.inpractice.co.uk) in 1992. Practical Solutions are business development consultants, working exclusively with law firms and legal organisations. They identify and target new business opportunities by introducing innovative ways of marketing legal services and using technology. Email [acarton@inpractice.co.uk](mailto:acarton@inpractice.co.uk) or tel 0161 929 8355.*

## Website Resources for the Family Lawyer and Client (2005) by David Hodson

I first wrote an article with this title in 2002; some useful resources in the general area of family law were coming onto the web at that time. Since then, I have been mainly working in Sydney and I found that Australia is much further ahead of England in web usage in daily life e.g. internet banking, bill payments, tax returns, public information, court forms and procedures and so on. Australian web resources in family law are very good, and some lead the world.

Having now returned to England, I find that there has been some progress in web resources in family law especially in government or public funded organisations. However, family law professionals and clients who make extensive use of the web for many aspects of their lives do not always get the help they could expect from family law web resources. Nevertheless we have some sites, including some aimed at young people, which are among the best in the world.

### Legal Resources

Resources still start for lawyers with e-libraries which have improved massively in the past few years. The leading ones are LexisNexis ([www.lexisnexis.co.uk](http://www.lexisnexis.co.uk)) with the Butterworths titles, Jordans ([www.familylaw.co.uk](http://www.familylaw.co.uk)) with the niche Family Law titles, FLR cases and many court forms, Justis ([www.justis.com](http://www.justis.com)) with FLR and WLR and other cases and a full set of statutes, Lawtel ([www.lawtel.com](http://www.lawtel.com)) with all the Sweet and Maxwell materials and a great deal of useful, up to date information and Westlaw ([www.westlaw.com](http://www.westlaw.com)). Each have a massive amount of information and materials, some sites being totally family law orientated and some being general sites with family law materials. Some have regular e-newsletters of updates. The sites are easy to use and you do not need to worry about books scattered (and lost) around an office. All offer trial periods so each practice and practitioner can decide what is best.

For myself, I could not now contemplate practising without online access to the Jordans new service, preferably with the Butterworths site as well. Both are brilliant sites. We now have a totally divided profession; those who go first, and almost only, to the e-libraries and those who still use things which come from trees!

A new and top quality service which has new cases, up to the minute developments, articles and other resources with CPD courses and a free weekly e-mail bulletin is Family Law Week ([www.familylawweek.co.uk](http://www.familylawweek.co.uk)) which is aimed at those who are comfortable with e-resources and prefer their news to arrive on their desktop via computer rather than in plastic envelopes.

A good, free place for judgments is the British and Irish Legal Information Institute ([www.bailii.org](http://www.bailii.org)) with judgments of Court of Appeal and a few High Court cases. This is an excellent site (with worldwide links) and one worth reading every so often for reported family cases. The Office of Public Sector Information (incorporating HM Stationary Office) site ([www.opsi.gov.uk](http://www.opsi.gov.uk)) has the full text of all public Acts of Parliament from 1988 onwards. A very good resource, but beware that it does not incorporate any later parliamentary amendments.

The Courts Service ([www.hmcourts-service.gov.uk](http://www.hmcourts-service.gov.uk)) offers information on daily court lists for the Family Division and PRFD, some recent practice directions and excellent information in relation to court fees for family proceedings.

It provides addresses, phone and fax numbers and maps for the courts. One can download many family Court forms. It has also a pilot online forms service where forms can be completed and submitted online, a service a few of us have been asking for in family law for many years. However the pilot courts are civil only, so can we try this very soon please in the family jurisdiction? It is very suitable to our work and answers the needs of both professionals and the intelligent litigant in person who is familiar with IT. Very good though the site is, it still does not have explanations of family law procedure (with flow charts of time table and linked forms) nor user friendly information of what to expect at court. It can still learn a lot from the Australian Family Court web site ([www.familycourt.gov.au](http://www.familycourt.gov.au)), which is probably the best in the world.

### Professional Organisations

The Solicitors Family Law Association, now rebadged as resolution, ([www.resolution.org.uk](http://www.resolution.org.uk)) is the leading family lawyers association in the world, famously having changed the whole culture by its conciliatory Code of Practice in 1982. The site lists members but there could be more information about them. It has the ground breaking Code but not their Guides to Good Practice which is an omission. It has details of local groups. Crucially it has really excellent fact sheets for members of the public and lawyers.

In contrast, the Law Society ([www.lawsociety.org.uk](http://www.lawsociety.org.uk)) is rather disappointing on family law. It still does not have the Law Society Protocol online - the standards governing the way all solicitors should practice family law. If online, it could then be downloaded to use in court documents, letters to clients etc. There is a list of Panel members but no family law information for lawyers and clients and little information on what work the society itself is doing.

The Family Law Bar Association ([www.flba.co.uk](http://www.flba.co.uk)) has a useful site with details of their lectures and some excellent lecture notes, details of recent practice developments, their regional groups and their commitment to ethnic minorities.

Then there are the mediators. The UK College of Family Mediators ([www.ukcfm.co.uk](http://www.ukcfm.co.uk)) is as close as possible to a UK regulatory body. The site lists mediator members by area, although this only highlights how few mediators belong to it. There are mediators in other organisations but the English public is nowhere given an online list of all mediators, legal aid and private, across the country subscribing to minimum standards. Little wonder mediation still struggles. The site no longer has the mediation Form E nor its Codes of Best Practice. There is only a small amount of information about mediation itself. Could not all mediation organisations co-fund a site, linked to their own, which sells mediation itself to a still sceptical public and legal profession, rather than highlighting their differences?

The Association of Child Abuse Lawyers strive for higher standards in this difficult area of work, from lawyers, experts and others. Their site ([www.childabuselawyers.com](http://www.childabuselawyers.com)) shows their commendable Code of practice but as with some other sites, they no longer have some vital information immediately available, which used to include information to explain to survivors of child abuse what to expect and seek when visiting a lawyer, how it will feel and the personal impact of the court process. This is a real pity.

The Family Rights Group ([www.frg.org.uk](http://www.frg.org.uk)) provides independent advice, information and advocacy to families involved with social services about the care and protection of their children. Its site gives valuable help including about Family Group Conferencing.

The Association of Lawyers for Children supports lawyers working in cases concerning children ([www.alc.org.uk](http://www.alc.org.uk)). The site is committed to its members. Rather than have its own fact sheets and perhaps duplicate what is elsewhere, it has excellent links to related organisations.

In fact, many member organisations now put more information in "member only" sections. Apart from the fact that I can never remember usernames and passwords to gain access, it makes non members wonder what is going on behind! Is it really necessary?

## Children and Families

One of the chief changes I have noticed after two years abroad has been the widespread expectation that there will be much greater contact and parental involvement for fathers. Families Need Fathers ([www.fnf.org.uk](http://www.fnf.org.uk)) has been the primary organisation over the years supporting their cause. The organisation does excellent work, pastorally and in providing guidance on rights and entitlements, with the site providing information sheets, local support gatherings etc. It is a site to which many clients can be well referred.

On child abduction, three sites are outstanding:

\* The Official Solicitor ([www.offsol.demon.co.uk](http://www.offsol.demon.co.uk)) has one of the top sites, describing his work, including amongst those under a disability, Court of Protection, children in litigation, medical consent and sterilisation and of course child abduction. On this, there are very good explanatory details and a questionnaire which must be completed by parents to be given to Central Authorities and other officials.

\* Re-Unite ([www.reunite.org](http://www.reunite.org)) is an excellent site with. It provides practical steps for parents fearing their child has been abducted, details of preventive action, who to contact, what to do about passports and offers strong but pragmatic words to those about to abduct or having abducted. This is a model for how a family law site should be.

\* Hilton House ([www.hiltonhouse.com](http://www.hiltonhouse.com)) comes from the guru of data on child abduction, William Hilton of Santa Clara, California, who years ago entered mythology as having every worldwide reported child abduction case on his site. It is invaluable and worth browsing.

A brilliant and very colourful site is Carelaw for children in care ([www.carelaw.org.uk](http://www.carelaw.org.uk)). It is packed with information and presented in simple terms for young people. Another good site is the NCH ([www.itsnotyourfault.org](http://www.itsnotyourfault.org)) which has similar top quality child directed information with the central message of the web address!

The best site dealing with domestic violence is Refuge ([www.refuge.org.uk](http://www.refuge.org.uk)) with details of their 24 hour hotline and emergency steps to take, as well as information on how to minimise danger and an exposure of the myths of domestic abuse. I have a vision of free internet terminals available in shops and public places, and this site is one to which access for all members of society is crucial. Part of abuse can be the control of information of rights and remedies, and we must make such web access very available. The site covers the issue of what abusers must do to change and refers to Respect ([www.respect.uk.net](http://www.respect.uk.net)) which works with perpetrators of violence. Domestic abuse affects children badly and The Hideout ([www.thehideout.org.uk](http://www.thehideout.org.uk)) is a first rate child orientated site for children and young people who witness abuse at home.

A top site is Divorce Aid ([www.divorceaid.co.uk](http://www.divorceaid.co.uk)) which has many excellent fact sheets on aspects of family breakdown; legal, financial, children and holistic. This is an incredible

resource which deserves even more praise as it is run as a voluntary enterprise.

The Legal Services Commission ([www.clsdirect.org.uk](http://www.clsdirect.org.uk)) has a good area of the site listing much sought information but then links to other sites. It explains the work of the Community Legal Services Fund. Legal aid has been replaced by a whole series of partnership providers of assistance in various forms, from conventional lawyers to other organisations as diverse as motoring organisations. The site lists their partners and what each organisation can do. It has a basic calculator for entitlement to legal aid.

CAFCASS ([www.cafcass.gov.uk](http://www.cafcass.gov.uk)) now has an immense and very user friendly site, with areas directed specifically to children, teenagers and parents.

The leading international organisation is the International Academy of Matrimonial Lawyers ([www.iaml.org](http://www.iaml.org)) which has a list of its approximately 300 peer elected members across the world. This is the best place to start to find an international lawyer abroad if one has no other contacts.

## Finance

Much finance work involves complex calculations. The CSA ([www.csa.gov.uk](http://www.csa.gov.uk)) site has details of its work and a self calculator. It spells out the 2003 changes and publishes the enforcement guides.

The Land Registry ([www.landreg.gov.uk](http://www.landreg.gov.uk)) describes its work and provides online data about properties for a minimal fee.

If you need to check on housing proposed as suitable accommodation, try [www.upmystreet.co.uk](http://www.upmystreet.co.uk) which includes the age and wealth of local residents and average prices! [www.findaproperty.com](http://www.findaproperty.com) allows one to search for properties in different areas and to get an idea of what is on the market, including rental information, which is so very helpful in preparing for trial.

Equal Partners ([www.equalpartners.co.uk](http://www.equalpartners.co.uk)) is a financial services practice in London whose site contains a massive amount of valuable information on financial products, a glossary of terms and explanations, best deals for loans, ISAs, deposits and calculations of investments, school fees policies and returns on lump sums.

Companies House ([www.companieshouse.co.uk](http://www.companieshouse.co.uk)) says one of its duties is to make information about companies available to the public - but this is not yet online.

## Other Sources

The European Union site ([www.europa.eu.int](http://www.europa.eu.int)) can be difficult to navigate but has the Brussels conventions if one can find them. The Hague Conventions are also available ([www.hcch.net](http://www.hcch.net)).

I have not included lawyers' own sites which would need an article of its own, but some are very good with lots of excellent, clearly presented information. Finding details of law firms can be done via a search engine but I prefer to use Delia Venables' site ([www.venables.co.uk](http://www.venables.co.uk)).

Portals with free information but primarily acting as referrals for lawyers, who have probably paid for the links, include [www.lawontheweb.co.uk](http://www.lawontheweb.co.uk), [www.divorce-online.co.uk](http://www.divorce-online.co.uk) and [www.family-solicitors.co.uk](http://www.family-solicitors.co.uk). Some offer divorce purchase kits with forms, draft orders and agreements. This is sometimes criticised by divorce lawyers but what is wrong in making forms available to the public? If all we have is an ability to fill in forms, I will retire to dive off the Barrier Reef!

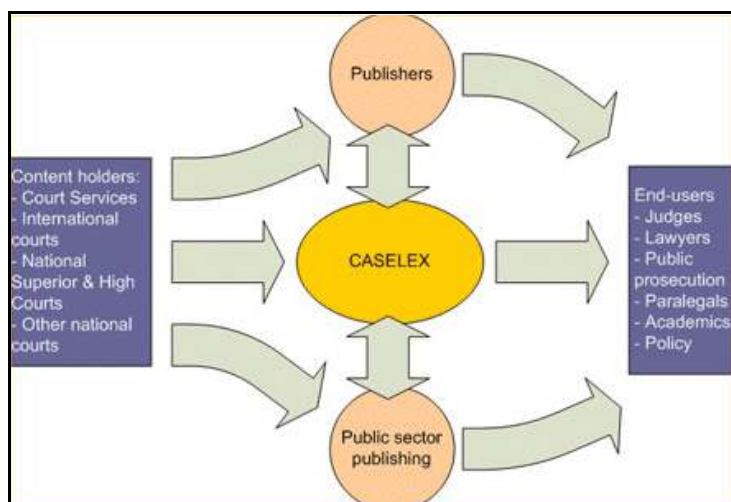
The Web has taught us what we are needed for as family lawyers. It is not information. That is freely available. It is not calculations. They are to be found everywhere. It is not DIY help whether quasi counselling or helping to cope personally or for children. It is not remote and generalised advice via e-mail.

The web has freed us up to do what has always been our chief role - to gain experience of people and relationships and to understand the law in both its narrow and wider operation and so to bring our clients through the most traumatic period in their lives, with fair outcomes, intact self respect and functional children and with minimum of stress and costs. The resources for us and our clients are there on the web. It just now needs us to be better family lawyers. This is what we really are needed for and what we are best able to do. And to do our job very well, we need to use the web resources.

*David Hodson is family law resolution specialist practising in London, Surrey and Sydney, an English and Australian qualified solicitor and mediator, an arbitrator and a part time Family Court judge (DDJ) in London (PRFD). He writes and speaks extensively on family law. His web site is at [www.davidhodson.com](http://www.davidhodson.com). Email [dh@davidhodson.com](mailto:dh@davidhodson.com).*

## Caselex: European Case Law Backbone By Flore Bouhey, First Law

First Law, [www.firstlaw.ie](http://www.firstlaw.ie), an Irish legal publisher, is taking part in a new European project called Caselex, [www.caselex.com](http://www.caselex.com), to open up access to national case law for legal professionals, courts and academic institutions across Europe.



Caselex will serve as a European case law backbone accessing and converting the comprehensive base of case law into easy obtainable and usable knowledge for open distribution through intermediaries and directly to end-users. It will be provided as an Internet service offering national and international court decisions linked to EU Law.

Caselex is built on a public-private consortium comprising 11 key players. It includes European publishers, public case law content holders and legal research centres. First Law will supply Irish judgments with an added headnote to the Caselex database. Further details of ourselves, and of WordWave, the UK participant, are given below.

Caselex, when fully operational, will be based in one of the Member States, and will provide:

- judgments and courts decision in their original language
- a summary and key words with translation for the user

- a multilingual index
- possibility of obtaining the integral decision translated.

As such, Caselex will allow a lawyer to access and use a decision rendered by foreign courts, such as the Cour de Cassation, the Bundesverfassungsgericht or the Dutch Supreme Court. Thus Caselex will facilitate the harmonized application of European based rules (Directives, Regulation and the EU Treaty) across Europe. For example by searching on the website, one could pose a search on newspaper cartels and the site will throw up cases which have been decided by Member States on this issue. It will focus on the main areas of commercial law, such as competition law, intellectual property law and company law.

The service, which will be fully internet based, will be launched in the first quarter of 2006. The service will not be free but will be based on a subscription which would make sense for lawyers who will use it regularly. A "Pay as you go" option is also being considered.

Progress can be monitored on the Caselex website where there is also a complete list of the participants. For more information please contact the project leaders Mr Stig Marthinsen ([stig.marthinsen@caselex.com](mailto:stig.marthinsen@caselex.com)) or Mr Marc de Vries ([marc.devries@caselex.com](mailto:marc.devries@caselex.com)).

*Flore Bouhey is Managing Editor of First Law. She is a French national. She has a degree in European Law from Universite ParisIPantheon Sorbonne and a LLM (Master) in European Law from University College Dublin. Email [Fbouhey@firstlaw.ie](mailto:Fbouhey@firstlaw.ie).*

### First Law Ltd., [www.firstlaw.ie](http://www.firstlaw.ie)

Based in Ireland, they publish daily on the Internet a Legal Current Awareness Service comprising Judgments, Statutory Instruments, Acts and legal news aimed primarily for the legal profession. They also publish legal textbooks for the legal profession, corporate and consumer markets.

### WordWave International, [www.wordwave.co.uk](http://www.wordwave.co.uk)

Word Wave International, based in London, is the largest court reporting and broadcast-captioning company in the world and is the emerging leader in creating searchable digital audio and video, as well as captioning Internet webcasts and conferences.

### Comment from Nicholas Conway, of Wordwave

Caselex will tap into national case law which will then be exploited at a European level. The public/private partnership will provide online access to case law from 10 countries and have market access to 17 countries.

We form part of the consortium which consists of 11 contractors - 4 of them are innovative in their respective markets, ours being publishing of legal data - 4 are national public content holders, and 3 are knowledge centres.

Not only will we be freely supplying the project with English case law from 2000 (probably that year, but yet to be confirmed) but we will also be advising on and implementing all publishing and editorial processes including case summary production, meta data input and thesaurus creation.

*Nicholas Conway, Business Development Manager  
[Nicholas.Conway@wordwave.co.uk](mailto:Nicholas.Conway@wordwave.co.uk), Tel 020 7421 4032.*

## Lawindexpro: Review and Discussion

By Delia Venables, Angus Hamilton, David Swarbrick

Lawindexpro ([www.lawindexpro.co.uk](http://www.lawindexpro.co.uk)) is a case law database and research tool. It links to UK and European cases as they come on line, and notes up and cross references important cases, adding and noting up older cases as they are cited.

The result is a huge database listing more cases from more courts, and from more years, on more topics, and with more full judgments than other systems. There are 95,000 case listings, 92,000 links to full text decisions, 104,000 references to external paper resources and neutral citations, 33,000 case summaries, and 24,000 cross-references between cases.

**Casemaps** provide a very helpful way of seeing a case in context, working in a way similar to map pages on the Internet where clicking on a location, "re-centres" the map on that point of interest.

**Cases Cited By** pages and **Cases Cited** show respectively how the logic of a case has been developed, and lay bare the historical logic of a case.

The service has been created by solicitor David Swarbrick, one of the pioneers of the legal internet, who has provided the free lawindex service since 1993 ([www.swarb.co.uk](http://www.swarb.co.uk)).

I asked Angus Hamilton, a solicitor in private practice in North London, to review the service. Angus's firm, Hamiltons Solicitors, [www.hamiltons-solicitors.co.uk](http://www.hamiltons-solicitors.co.uk), email [hamiltons@btinternet.com](mailto:hamiltons@btinternet.com) specialises in criminal litigation, data protection issues, regulation of the internet, computers and the law and e-commerce. Angus did not find it particularly helpful (see below). I also asked David Swarbrick to explain a bit more about the service.

### Angus Hamilton's Review

The unique selling point of Lawindexpro appears to be that any case that is researched is placed in a context, referred to on the site as a 'Casemap', which provides links to both the cases cited by the particular case and the cases which cite it. The idea is to illustrate how case based or 'judge made' law has developed through a series of judgments.

Lawindexpro also provides a weekly e-mail based updating service which lists significant judgments of the preceding week. The resource is subscription based although some limited facilities are accessible without charge.

My approach to Lawindexpro was as a criminal litigator specialising in offences committed utilising the medium of the Internet. Currently my principal resources are Sweet & Maxwell's Crime Desktop, a CD ROM based service which links case law and commentary together and which is updated 6 times a year; Crimeline, a free weekly e-mail based case reporting service; Criminal Law Week's weekly online subscription based statute and case law updating service and Butterworths online service. An increasing number of significant cases are also now available free of charge online – for example through BAILII.

The main question I posed about Lawindexpro was whether it offered a significantly different service from that offered by my current resources. Ultimately I don't think that it does and it is not a resource that, as a criminal litigator, I would currently consider investing in. My present most common route for researching a point is to use Crime Desktop to look at the law as it was approximately 3-4 months ago and

then to use Criminal Law Week and Butterworths to check on recent developments. All recent reported cases will indicate whether they are overruling, confirming or clarifying previous decisions and therefore the facility offered by Lawindexpro to place a case in context seems to me to be of limited value. It is possible that a practitioner practising in a different area e.g. civil litigation or employment law may find the resource more useful.

I must say that I also found Lawindexpro's search facility frustrating. I tested the facility by searching for the Court of Appeal's decision in Oliver Hartrey and Baldwin from November 2002. This is the leading authority on sentencing in cases involving indecent photographs of children. I entered the year, court and name of the decision. Frustratingly the search did not lead me to Oliver but to a couple of earlier authorities. The search also produced a long list of other authorities none of which seemed to have anything to do with the case I was looking for or the criteria I had entered – which was rather bewildering. It is possible that I was not using the search facility properly although I would expect such a facility to be either 'obvious' or to have clear instructions about usage.

### David Swarbrick's Comments

The ways in which case law is accessed and used are changing rapidly. The fact that a case is looked up on the internet changes fundamentally the way it can be read, and will change the way that cases should be read. Lawindexpro sets out to make the best use of the internet in first finding cases and then presenting the cases in ways which make the best use of that environment.

Where a particular named case is wanted, we facilitate the name search. Name searches form over 90% of all cases access requests. We know that in 71% of 5,000 recent searches for particular cases, the case sought was found - a very high success rate. These cases are from all areas of law, law reports and jurisdictions.

Lawindexpro is interactive. It is a continuing conversation between our subscribers and ourselves. Our users tell us which cases they want more information on, and we provide the information, as far as we can. In this way, we are collecting only material which has continuing relevance.

When faced with a case which our reviewer felt deserved noting up, he need only hit a button to request that the case be upgraded. The case itself is not available in full text through lawindexpro, but we have to reflect the selections made by the resources we rely upon. In this case neither the judges, the Court Service, nor BAILII have felt it necessary to publish the case. We have a summary and references to three paper resources for further information. We list some 13,000 cases from that court.

We are creating a new and very different way of researching case law. As students we learn that common law is built upon the principle of precedent. Each judgment is derived in part from previous judgments. Paper based systems necessarily present cases as if they stood alone. Lawindexpro makes it possible to see case law as it actually works - as a continually developing flow of logic.

We are not a specialist service. Even a specialist must have general case law resources. Lawindexpro provides that general resource very effectively and at a fraction of the costs of other services.

*I would be pleased to provide any subscriber to the Internet Newsletter for Lawyers with a free one month trial. Please contact me on [ds@lawindexpro.co.uk](mailto:ds@lawindexpro.co.uk).*

## Website Optimisation – Bringing Trade Mark Infringers to Book By Daniel Doherty

The relationship between website optimisation and trade mark infringement is still an academic debate and has yet to be fully tackled by the courts in the UK.

Business on the internet heavily relies on search facilities. Arguably proficient website optimisation though search facilities is as good as a 2 minute TV ad on a Saturday night! Competitors are desperate to ensure that internet users who are dependent on search facilities can easily search, locate and obtain information about their company. Trade mark owners will therefore exploit their statutory rights in attempting to 'monopolise' particular key words used for search terms for website optimisation.

Many search engine providers (SEPs) have seen the market opportunities here and have therefore taken it upon themselves to make revenue from selling these keywords. Google offers its 'Adwords' service whereby companies or in fact individuals can select a range of keywords or phrases irrespective of whether these words are protected by registered trade marks. Individuals pay search engine providers, like Google, for its particular advertising link to appear every time a particular search term is used. The user is totally unaware of the keyword selected but is presented with the 'Banner' advertisement. With so much money going into SEPs pockets one has to ask to what extent their liability for trade mark infringement is.

Let's start by distinguishing the activities of the competitors and the SEPs. Of course it is the 'third party competitor' which 'purchases' the sponsored term from the SEP. The competitor can secure its own brand name but may also wish to secure a search term which is reflective of another's registered or unregistered trade mark.

On the other hand the SEP has the responsibility to make available and sell banner advertising for exploitation. This will of course mean that it is also offering 'protected' search terms to those who have little or no interest in the term other than to exploit the goodwill vested in another's brand. The responsibility that a SEP has with regards to keywords can be distinguished from meta tag abuse where the search engine provider has very little control.

## Law in the UK

Action between competitors can be looked at by what is already on the statute books. Trade mark infringement within the UK is governed by the Trade Marks Act 1994. The trade mark owner will usually rely on s.10 (2) of the Act which prevents another from using an identical/similar mark against similar/identical goods/services where there exists a likelihood of confusion. The possibility is that many competitors will seek to rely on s. 10 (6) defence which allows comparative advertising so long as such advertising is in accordance with honest practices.

The difficulty will be to establish that there exists a likelihood of confusion on the part of the public. This was dealt with in the Court of Appeal case *Reed Executive PLC v Reed Business Information Limited* [2004] RPC 40 which dealt with use of hidden metatags/keywords for website optimisation by competitors (rather than search engine providers). Although *obiter*, the court did question whether such 'use' could relate to 'use' for trade mark infringement purposes. More clarity is therefore needed on this point.

Although we have some guidance as to 'meta tag abuse' in the *Reed* case there is little or no jurisprudence on an SEPs liability with regards to keyword trade mark infringement. Perhaps one could boldly suggest that an SEP could not directly infringe a third party's trade mark. Firstly the SEP is not responsible for the selection or subsequent use of another's trade mark within any given banner advertisement. This solely rests with the competitor who is applying for the banner. It would take an imaginative judge to find that SEP's are using a trade mark in a trade marks sense (and I think he will be stepping down shortly!)

With any new legal matter, one must seek guidance from its jurisprudence. It is now well established that the essential function of a trade mark is to indicate the origin of the goods or services to which it is applied. It guarantees origin to the average consumer within the marketplace. So how does this apply to something which the consumer does not see?

In my opinion, the courts within the UK will follow a similar line of thought as the *Reed* case in that the 'keyword' (rather than the advertisement) never really comes to the attention of the consumer but is something that is automated through computer search systems. Does such use interfere with the guarantee function? Probably not!

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## Whither the Legal Web? A new e-book (with CPD) by Nick Holmes and Delia Venables Where the legal web is today — and where it is going.

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Do search results lead to a likelihood of confusion? Taking into consideration the common doctrine of a global assessment of a given case, the average consumer is unlikely to be confused into believing that the search results/advertising banner produced by reference to a particular trade mark, will solely identify the trade mark owner or that the websites are economically connected. Perhaps trade mark owners should push for s.10 (1) infringement (identical mark against identical products) where likelihood of confusion is not required.

In fact Lord Justice Jacob in the *Reed* case held:

*"The web-using member of the public knows that all sorts of banners appear when he or she does a search and they are or may be triggered by something in the search. He or she also knows that searches produce fuzzy results, results with much rubbish thrown in".*

Perhaps the following questions need to be asked:

Q1: In establishing the SEP's role in hidden keywords, can displaying banner results amount to 'use' as in trade mark 'use'; and

Q2: Whether using keywords to provide links to third party goods amounts to 'relevant use' in relation to the goods or services for the purposes of trade mark infringement.

It is likely that if this matter is before a UK court in the near future, that such questions will be referred to the European Court of Justice for guidance.

Alternatively, SEPs may be found in joint tortfeasorship with the primary infringer. Guidance can be taken from the Court of Appeal case in *MCA Records Inc v. Charly Records Limited and Ors [2002] EMLR1; [2002] FSR 26* where to be successful in an infringement claim, the claimant must show that the SEP has acted in common design with the infringer by inducing, directing or inciting the said infringement. To be successful here evidence would be required to show that the SEP did more than facilitate but in fact was actively involved in the infringement.

## What can be taken from other countries?

Judgments from France, Australia or America only have persuasive authority. For example, the case of *Viaticum, Luteciel v. Google* concerned the use of keyword displays and advertising websites through search terms provided by Google. Here Viaticum and Luteciel discovered that when their trade marks were used as a search term in Google France their links were shown together with those of their competitors. Trade mark infringement and unfair competition proceedings were commenced against Google as it had sold the words 'Vol', 'Voyage' and 'Bourse' to their competitors, these words were an essential element to the Claimants' trade marks.

Surprisingly the French Court, Tribunal de Grande Instance de Nanterre held that such use was an infringement of the Claimants' trade marks. The Court held that the marks, La Bourse des Vols and La Bourse des Voyages were distinctive with regards to the goods/services applied.

Google thus sold common words to the Claimants' competitors, yet given the distinctive nature of the marks, and the use made thereof by the Claimants, Google was prohibited from doing so under Art.L.713-2 of the Code of Intellectual Property.

Google was required to pay the Claimants 12870 Euros in damages for unlawful use of their trade marks. An important point here is that the French courts are required to interpret 'harmonised' trade mark law imposed upon by

the Trade Marks Directive 89/104. Arguably the UK may take a similar approach.

The American courts have taken a similar approach. A US district court has recently ruled against Google in *Government Employees Insurance Company v. Google Inc.* This case again concerned Google Keyword service 'AdWords'. The action was brought over use of the words 'Geico' and 'Geico Direct' as keywords by a third party. In this case the judge found that there was indeed a trade mark infringement where the terms were used for sponsored ads.

GEICO a car insurance company sued Google and Overture (a subsidiary of Yahoo!) over the selling of its trade mark as a sponsored term. Overture settled out of court; however Google fought to the end - and lost. However Google won a summary judgement concerning the sale of the keyword but as regards the question whether Google's use of the text in a sponsored ad was an infringement, the Judge answered:

*"GEICO had established a likelihood of confusion" and that there had in fact been a breach of the Claimant's trade mark rights "solely with regard to the sponsored links that use GEICO's trade marks in their heading or text."*

This case has been stayed in the hope that the matter can be settled out of court. If it doesn't the court will need to consider whether Google is liable or its advertisers. Of course all eyes will be on this case over the coming months.

Liability for SEPs will remain an academic debate in the UK until it is fully dealt with by the UK courts or in Europe. With little guidance, trade mark owners are discouraged from disputing the infringement in the court with little precedent. However, the case for joint tortfeasorship is certainly more encouraging. And as for trade mark dilution... well that's a different story for a different day.

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## CPD Anywhere, continued from page 2

Most of the time delegates are looking at the slides themselves. The software includes tools for highlighting and pointing to text just like an online blackboard. You can also add in interaction with the audience by asking questions of them and taking an online straw poll. The only additional technical equipment I needed was a microphone and a packet of post-its to remind myself to allow time for questions and check understanding! You must also make arrangements to ensure that the room you are working in is quiet and you will not be interrupted. I actually did mine in the comfort of my kitchen at home.

There was something slightly unnerving about speaking to a group of people with whom you cannot make eye contact but you soon get used to it and can compensate by pausing to ask questions. It reminded me of the occasional telephone hearing or hearing by video I have done. There is a slight time lag between your speaking and the words being heard by the delegates but only the presenter is aware of that and it soon stops being noticeable. I was also told that my heavy breathing at the beginning when waiting for the delegates to sign on was rather pronounced! It is also a good exercise in sticking to time estimates.

## About CPD4Lawyers

Established in 2003 by Richard Smithies of Bearden Solicitors, CPD4Lawyers was the first law training company to hold live online lectures. Their lecturers have included leaders in their field such as Gill Steel (LawSkills Ltd), Matthew Hutton, Tessa Shepperson (Landlord Law) and Dai Davies (Nabarro Nathanson) with topics ranging from Probate and Tax to Product Liability, Landlord Law, Family Law with more to come.

*Jacqui Gilliatt is a family law barrister with more than 14 years' experience from 4 Brick Court, [www.4bc.co.uk](http://www.4bc.co.uk). Email [jacquigilliatt@blueyonder.co.uk](mailto:jacquigilliatt@blueyonder.co.uk).*

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## When is your software not your software?

*By Kolvin Stone*

"We have a good relationship with our supplier" or "I have it all in an email" are typical responses from clients when they hear from their lawyers the importance of putting in place a clear written agreement. This is crucial in relation to intellectual property ownership in website development agreements as the commissioning client often expects to own all elements of the work which they have paid for.

Clearsprings Management, [www.clearsprings.co.uk](http://www.clearsprings.co.uk), did not, however, have its expectations fulfilled when the High Court found (14 July 2005) that Clearsprings had no ownership rights in a web based system which the Judge, Mr Christopher Lloyd QC, described as an "*electronic embodiment of Clearsprings' operating procedures*".

In early 2000, Clearsprings engaged Businesslinx, trading as [access2.co.uk](http://access2.co.uk), to develop a web based database by which Clearsprings could report to the Home Office on the accommodation services it provides to asylum seekers. Work commenced on the basis of a letter outlining in broad terms the work to be carried out and the fees to be paid. The letter formed the basis for the contractual arrangements but was only in general terms. The letter did not specify the exact requirements of Clearsprings and nor did it contain any of the usual contractual protections. Ultimately, this led to serious disagreement.

By far the biggest dispute was over the ownership of the intellectual property rights in the system. Not only did Clearsprings want to own the intellectual property in the system as it was a reflection of its operating procedures but also because it saw an opportunity to license the software to other businesses that had a similar commercial need. This would have allowed Clearsprings to control use of the system and prevent use by its competitors. It would also open up potential new revenue streams.

The key issues arising from the case are as follows:

1. Was there an express term in the agreement between the parties transferring ownership of the intellectual property rights in the system to Clearsprings?
2. In the absence of such an express term, would the Court imply a term to this effect?

The Court accepted that there was an agreement in principle that Clearsprings would own the intellectual property in the system but because the transfer was still subject to further negotiations on the precise nature of the terms transferring ownership, the Court found that there was no binding agreement on this issue. You can see the full judgment on the [access2.co.uk](http://access2.co.uk) site.

In this situation, the Court may imply a term in to the contract to deal with the intellectual property issue as the parties have failed to provide for this expressly. The Court will not rewrite an agreement but will only imply terms to give effect to the parties intention and to give "business efficacy" to an agreement. As it was always intended by the parties that Clearsprings should have rights to use the system (even though the parties failed to specify the exact scope of those rights in a binding agreement), the Court had no problem implying a term to this effect. The difficulty is in determining the scope of the rights to be granted. Should there be an implied licence or an implied right to transfer ownership?

It is well recognised that where a client engages the services of an independent contractor to perform work which involves the creation of a copyright work, the circumstances may be such that there will be implied into the contract an agreement that the contractor will transfer to the client copyright in the work created. Where the circumstances do not justify the implication of an obligation to transfer ownership, the law may nevertheless require the implication of a licence, whether exclusive or otherwise, and on such terms as may be necessary to make sense of the commercial bargain between the parties. The default position is that the contractor is entitled to retain ownership in the copyright. The mere fact of commissioning alone is not enough to entitle the client to copyright. There must be other factors present to justify the implication of an obligation to transfer copyright.

The Court will only do the minimum necessary to secure rights to use the system. In this case, the Court found that Clearsprings did not need to own the system in order to be able to use the system and, therefore, a licence was sufficient.

Having decided that a licence is appropriate, the Court has to determine the scope of the licence. Clearsprings argued that if the Court rejected its submission that it should own the system, then it should be entitled to an exclusive licence with the right to grant sub-licences. In practical terms, this would be the same as owning the system as Clearsprings would have been able to prevent competitors using the system and would also have been able to earn revenue through sub-licensing. Again, the Court re-iterated that the scope of the licence should only be the minimum necessary to use the system. Granting exclusivity and the right to sub-license went too far as these rights were not necessary to use the system. All that Clearsprings was entitled to was a non-exclusive, perpetual and royalty free licence.

It is common for developers to re-use software routines that were developed for different clients. The Court had regard to this industry practice in coming to its decision and accepted that in future projects BusinessLinx should be free to use routines that were developed for the system unless a particular routine would make use of ClearSprings' confidential and proprietary information. Implying a term that transferred ownership or granted an exclusive licence would be contrary to this practice. This practice was a significant factor in the Court reaching its decision.

This case is a salutary warning that clients should put in place a clear written contract specifying exactly who will own what elements of the software or website being developed.

*Kolvin Stone is a solicitor in the Commerce and Technology department at City firm Fox Williams, [www.foxwilliams.com](http://www.foxwilliams.com). Email contact [kstone@foxwilliams.com](mailto:kstone@foxwilliams.com).*

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