

Internet Newsletter for Lawyers

By Delia Venables

November/December 2006

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Summer of Woe for Online Gaming by Lindsey Greig



On Friday 13 October, President Bush signed the Security and Accountability For Every (SAFE) Port Act. By the end of the day, the world's largest online gambling website, PartyGaming, www.partygaming.com, had shed \$1 billion of US

business. In a terse statement Party Gaming announced, 'The Group has suspended all real money gaming activities to customers located in the United States with immediate effect'. Their share price, which had a 52-week high of 150p, tumbled to 30p by 17 October.

The passage of the legislation had been rated a million to one shot by a leading online gambling operator just days before Senate Majority Leader, Bill Frist, R-Tenn, succeeded in a last gasp manoeuvre, in the final hours before Congress adjourned for the November elections, to persuade a Committee of Conference of the United States Congress to attach The Unlawful Internet Gambling Enforcement Act to HR 4954, the Safe Port Act, which was duly passed.

The signing of the Safe Port Act marked a dramatic finale to a summer of woe for the online industry, particularly those operators who accepted bets or gaming from the US.

The first dramatic move was the US authorities arrest of David Carruthers, at the time Chief Executive of BetonSports, www.betonsports.com, as he passed through the United States in transit to Costa Rica. The arrest of Carruthers, a British citizen, Chief Executive of an Aim listed company, and a well-known figure in the UK gambling industry, who had spent most of his career with Ladbrokes, sent profound shock waves through the gaming sector.

The 22-count indictment charging 11 individuals and four corporations, including BetonSports, on various charges of racketeering, conspiracy and fraud was followed by a Department of Justice announcement that: 'in conjunction with the indictment, the United States has filed a civil complaint in federal court to obtain an order requiring BetonSports PLC to stop taking sports bets from the United States, and to return money held in wagering accounts to account holders in the United States'. US District Judge Catherine D. Perry issued the temporary restraining order on July 17. In a matter of days BetonSports withdrew from the US market, David Carruthers contract was terminated and the company's shares remain suspended.

On Thursday 26 September Peter Dicks, the non-executive Chairman of Sportingbet, www.sportingbet.com, a British citizen and a well known figure in the City was detained in New York, at the request of the State of Louisiana. He was subsequently released and Louisiana failed to obtain his extradition from New York.

And in Europe....

But it is not only in the US that the authorities have been taking action. In France, in another dramatic move, the co-CEOs of online gambling operator bwin, www.bwin.com, Manfred Bodner and Norbert Teufelberger, were arrested at a press conference announcing the company's sponsorship of the AS Monaco football team.

In Germany on 10 August, the Saxon Ministry of the Interior secured a prohibition order against bwin, with immediate effect, which prohibits the operator from organising, distributing or advertising sports bets in the state of Saxony.

Where does all this leave the online gambling industry? The first answer is, certainly as far as the larger operators are concerned, still in business. Indeed Dresdner Kleinwort, in a research note dated 17 October 2006, rated online poker site PartyGaming a buy, despite the loss of its US market.

Several privately owned companies have said that they will continue to accept bets from the US, arguing that their activity is lawful, that the transactions do not take place in the US but offshore, where their activities are legal and licenced. The lure of the US market, still the largest online betting and gaming market in the world, is powerful.

However the crucial practical issue for those wishing to take bets from the US is will they find a bank that will work with them? More on that later.

Unlawful Internet Gambling Enforcement Act

There is a certain irony that the Unlawful Internet Gambling Enforcement Act has had such a powerful affect without actually changing or introducing restrictions on gambling. The drafters of the Act were at pains to make clear that the Act was about taking action against unlawful gambling and not about clarifying any of the grey areas that currently exist about what is or is not an unlawful wager.

The Rule of Construction of the Act states: 'No provision of this subchapter shall be construed as altering, limiting or extending any federal or State law or Tribal-State compact prohibiting, permitting or regulating gambling within the United States'.

Indeed, it is the greyness of the current legal and regulatory position in the US which accounts for the dramatic impact of this legislation; for what the legislation does is to put the banks and financial institutions centre stage.

The Role of the Banks

Before the Unlawful Internet Gambling Enforcement Act came into force, the operators were the ones who primarily carried the risk of the grey turning out the wrong colour if they came before the Courts, a risk they have been prepared to take. However with the new legislation, the banks are those who run the risk. Naturally that is not a prospect, particularly for those banking institutions with substantial assets in the US, with which they are comfortable. In the UK that has meant that the Royal Bank of Scotland and Barclays have both made clear that they would be unable to provide services to companies who accepted bets or wagers from the US.

However, the exemptions to the Act point to potentially significant developments with regard to internet gambling within the US. The first exemption applies to the Interstate Horse Racing Act, which permits cross-state border sports betting (although the Department of Justice disputes this) in certain circumstances. Online companies such as Youbet, who operate within the US, will be able to continue.

Interestingly there are also carve outs for intra-state internet gambling, something for which the American Gaming Association, which represents the major US land based casinos, lobbied hard. The Act notes: 'Intrastate transactions: The term 'unlawful internet gambling' shall not include placing, receiving or otherwise transmitting a bet or wager where- (i) the bet or wager is initiated and received

or otherwise made exclusively within a single State'. The Act goes on to say that the wagering must be permitted under state law and that safeguards to block under-age gambling and to identify location must be in place, but clearly leaves open the door for individual States to permit online gambling.

At the moment, the Department of Justice argues that all forms of internet gambling are illegal through the Wire Act and does not accept that individual States are free to licence online operators. However, the influential American Gaming Association is already lobbying hard for Congress to launch an enquiry into online gambling with the aim of developing a regulated framework.

The major US casino operators make little secret of their desire to enter the online market as soon as they are permitted to do so.

So what of the future?

As far as the US is concerned, offshore privately owned companies, who have an appetite for the risks involved will continue to trade, finding ways to receive and pay out money to their clients. The US Department of Justice may pursue further action but may find it hard to replicate the spectacular impact of this summer's campaign.

For publicly traded companies the US market will remain beyond reach, until there is a shift in the political, legislative and regulatory atmosphere. But these companies still have substantial businesses which they have every intention of growing. There is likely to be ever more intensive competition for the British and European market, with operators also looking to Asia for further opportunities.

For all the dramatic events of the last few months, this is not the end of the online gambling story. It might be the end of a chapter but another one is beginning and some way down the line, the US market will see regulated remote gambling. And, of course, some way not so far down the line, the UK will be offering remote gambling licences under the Gambling Act 2005.

Lindsey Greig is Managing Editor of World Online Gambling Law Report. Since its launch in 2002, this has become essential reading for regulators, operators, advisors and suppliers. Lindsey has also developed a series of key events for the industry in partnership with several blue chip clients including the London Stock Exchange, Kirkpatrick & Lockhart Nicholson Graham, BDO Stoy Hayward and leading banks. He is also Managing Editor of e-commerce law & policy, e-commerce law reports, world sports law report, data protection law & policy and e-finance & payments law & policy (see www.e-comlaw.com). Email lindsey.greig@e-comlaw.com.

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Sponsored Links on the Venables Website

I am now prepared to take a few sponsored links. Some of the web pages on my site are designed to be of interest to firms of solicitors looking for particular services (software, web design, experts, HIPs services, CPD, legal jobs and recruitment, and indeed solicitors looking for barristers with particular expertise); other pages are designed to assist ordinary people looking for legal services (conveyancing, divorce, wills, personal injury and so on). Thus, different types of organisation might be interested in a sponsored link on particular pages. If you would be interested in considering any of these possibilities, please see www.venables.co.uk/aboutsponsoredlinks.htm.

Continuing with the feature on Virtual Law Firms which we started in the September/October issue.....

Lawyers Direct by James Knight

Lawyers Direct was founded in 2002 by myself and Charles Stringer (see www.lawyers-direct.biz). We realised there was significant demand from experienced solicitors wanting to work in a more flexible manner, but very few real options to be had in this regard especially in private practice. Many wanted to avoid the daily grind of a traditional office whilst making good use of their legal expertise.

It was also apparent to us that there was strong demand from small and medium sized companies looking for much better value from their lawyers without any compromise on the expertise of the advising solicitors. In fact these companies seemed to want a more personalised and hands-on service which they felt the larger firms often failed to deliver.

The culmination of these two factors combined with the rapid spread of broadband led us to look at home working as a distinct possibility. On the one hand home working would facilitate a flexible arrangement whilst simultaneously reducing costs, but this type of arrangement did not mean that quality of service needed to suffer.

From the moment we placed our first advertisement, applications have flooded in. To date we have received over 2,500 although we have only interviewed a very small percentage of these. Four years on and Lawyers Direct has 65 highly experienced ex-city solicitors. It is the country's leading virtual law firm whilst for the past two years it has been the country's fastest growing law firm of any kind, both in terms of turnover and the number of fee earners. The firm predominantly handles corporate and commercial matters although 4 solicitors specialise in litigation.

Solicitors operate from their own home office which they establish to a certain required standard. A central office in Mayfair, London, currently comprised of 8 people handles the administrative aspects of the firm. A sophisticated IT system ensures that the firm operates in a way that is no less efficient than if everyone worked under the same roof.

Whilst the solicitors are technically self-employed, the work they do is conducted in the name of the firm and covered by the firm's professional indemnity insurance policy.

Following considerable solicitor demand, we established the Just Rewards Programme in July 2003. Lawyers receive

The screenshot shows the homepage of Lawyers Direct. At the top right is the logo 'LAWYERS DIRECT'. Below it is a navigation menu with links: HOME, SERVICES, LAWYERS, CLIENTS, CAREERS, ABOUT US, NEWS, CONTACT US. The main content area features a large heading 'Corporate Lawyers Without the Overheads'. Below this heading is a section titled 'Why is Lawyers Direct special?' followed by a paragraph describing the firm's revolutionary model. Another section 'How have we done this?' explains the removal of unnecessary overheads. A 'What is left?' section lists three key features: 65 experienced solicitors, a small central office, and Law Society regulation. On the right side, there is a 'Lawyer Profile' for Karen Mason, including a photo and a brief description of her expertise. A 'Read more..' link is also present.

The picture and description of the lawyer changes each time the site is accessed - an interesting way to indicate the depth of experience available in the firm

80% of their own fees and generous commissions for introducing client work that falls outside their expertise or capability. This helps solicitors leverage their existing client relationships without the need to establish their own law firm. It has been very well received and has helped fuel the growth of the firm as a whole. We continue to grow at a rate of between 2 and 5 solicitors per month whilst the central office hires one additional person about every two months.

The solicitors that work with us experience all the flexibility and freedom of being self-employed without the downside. Their administration is negligible whilst workflow is maintained at manageable levels. Solicitors that find themselves too busy to cope with client demand are seamlessly assisted by colleagues whilst those looking for more work need only request the same from central office. Personal relationships between colleagues are created at lunches and dinners and maintained through our intranet and discussion boards.

Technology has evolved in such a way colleagues no longer need to co-exist under one roof and there are definite advantages in flexible working. Our clients are delighted with the service and savings whilst lawyers regularly tell us that they have never enjoyed their legal career as much. They say their relationships with clients has never been better or closer and financially they are much better off. We believe the virtual law firm has a good future.

James Knight, james.knight@lawyers-direct.biz

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Access to Irish Case Law via IRLII by John Mee and Micheal O'Dowd



The Irish Legal Information Initiative (www.irlii.org) has developed a further service for those who wish to keep up with legal developments in Ireland. All judgments added to the IRLII index of Irish cases since July 2005 have been allocated to subject areas and assigned with keywords. This enables users to scan quickly through recent cases for issues that interest them and researchers can instantly view cases which relate to any given subject area through links to the full text of the case on BAILII (www.bailii.org). It is hoped that this initiative will result in easier accessibility of decided cases in Ireland. A RSS feed of recent cases is also available at www.ucc.ie/law/irlii/rss/irlriiindex.xml.

In 2001, the IRLII website was established at www.irlii.org, hosted by the Law Faculty, University College Cork. The project is led by Professor John Mee and the website is managed by Micheal O'Dowd. While it is a 'LII' like BAILII, AUSTLII (www.austlii.org) or CanLII (www.canlii.org), IRLII is called an 'Initiative' rather than an 'Institute' to emphasise that it is intended as a complement to BAILII rather than as a rival. IRLII started life as a simple webpage, where recent judgments could be uploaded pending their availability on the BAILII database.

Given the consolidation of the BAILII website, now maintained by permanent staff led by Joe Ury, the function of IRLII has changed. Now, as well as providing customised access to the BAILII site for Irish users, it offers additional services which go beyond the type offered on the main BAILII site, for example, a searchable index of Irish cases,

a searchable index of articles in Irish legal periodicals and a database of Leading Irish Cases classified by subject (along the lines of the Open Law project subsequently initiated by BAILII (www.bailii.org/openlaw) in relation to UK cases). See also the November/December 2004 issue of this newsletter (BAILII and IRLII: Freeing the Law in Ireland, www.venables.co.uk/n0411freelawireland.htm). The IRLII website has been funded by the Arthur Cox Foundation, a charitable organisation administered through the Law Society of Ireland, and by the Law Faculty, University College Cork.

Current projects being undertaken by IRLII include attempting to increase the comprehensiveness of the coverage of Irish case law on BAILII. This involves scanning missing judgments at University College Cork with a view to creating, in the first instance, a fully comprehensive "millennium collection" of Irish superior court judgments from 2000 onwards. Although most of the relevant judgments are available on BAILII, there are certain gaps, caused for example by a temporary break in the feed of cases from the courts in 2003. The current collection contains a very substantial body of Irish cases going back to 1997 and so a subsequent target will be to fill in any gaps going further into the past. In addition, we have been undertaking a pilot project in relation to unreported Irish judgments, a significant source of Irish law (particularly in previous decades). These cases can be difficult to access, especially outside Ireland. Thus far, our pilot project has focused on 1988 and 1989 and, at this early stage, there are roughly 50 cases from these years on BAILII (mostly unreported, some leading Irish cases).

Professor John Mee is a member of the Law Faculty at University College Cork and is a trustee director of BAILII. Micheal O'Dowd is a research postgraduate student in the Law Faculty at University College Cork. Email: j.mee@ucc.ie, m.odowd@ucc.ie.

Selling Legal Services Online... and why it is hard

Interview with Margaret Briffa of Briffa

Briffa, Intellectual Property and Information Technology Lawyers based in Islington, www.briffa.com, were one of the pioneers of selling legal services online with a "document web shop". Now however they have withdrawn these services. Here, I interview Margaret Briffa, on what they did - and why they are not doing it any more.

Delia: *What services did you offer?*

Margaret: The document web shop was launched in 1998. It was a development of a CD Rom we had produced in 1997 called 'Contracts for your Multimedia Business' which featured about 15 standard documents, notes and case studies to help new media start up companies avoid the most common mistakes. The idea was to provide something that was affordable and useable and would get a business through its early stage without making any basic legal errors. The documents were written in plain English and annotated with notes to help the user understand them.

The document shop window on our web site was arranged in 'shelves' according to the type of business a user was operating, such as design shelves, multimedia shelves and technology shelves. On each shelf you found similar documents such as a confidentiality agreement, freelancer agreement, and a terms and conditions of business. The documents were inexpensive compared to bespoke

documents, for example, the Freelancer Agreement and terms and condition documents were £150 and a Confidentiality Agreement was £50 (all plus VAT).

If a site visitor ordered a document, a lawyer would call them to make sure that the document was the correct one and to ensure that they understood how it should be used. The document would then be sent to the user by email and an invoice would follow in the post.

The purpose of the web shop was to grab the attention of businesses who would not otherwise think of using a lawyer. We intended to demonstrate that obtaining some legal advice need not be expensive and that setting things up in a way which ensured the smooth running of the business is a good investment. It was also a way of introducing a business to the concept of intellectual property and how it could be identified, retained and exploited.

We sold several documents a month between 1998 and 2005, generating a few hundred pounds a month. The costs of running the shop were negligible. There was initial investment in creating a set of documents and thereafter we updated documents as and when appropriate. Enquiries were dealt with by junior lawyers whose hourly rates were between £120 and £150 an hour. Even taking into account the lawyer's phone conversation, the shop was profitable.

Delia: *What were the problems?*

Margaret: A practical problem was that the service became almost too popular in that a business with more complicated needs would ask why, for example, they were quoted a

fixed fee of £450 for terms and conditions of their design business when there was a shop document for £150!

The reason, of course, is that it takes time to prepare a bespoke document that takes into account, with a set of terms and conditions, how the client's business actually runs and what a client wants to achieve. The web site documents were very much starter documents and this was explained on the site. However the need to differentiate between the two approaches to potential clients and to justify a higher charge to the client to take into consideration the time involved in preparing a bespoke document based on client instructions was becoming time consuming and a distraction from our main business of providing bespoke and creative legal solutions to creative businesses.

Delia: *Why did you decide to withdraw the service?*

Margaret: There were two main reasons. Firstly, the shop had outlived its usefulness to us as a brand profile statement. Briffa was established in 1995 as a specialist intellectual property firm with a stated goal of focusing on small to medium sized business. By 2005 the brand position was well established.

Secondly we found the shop was becoming a barrier to getting our core messages across, namely that, other than for a start up business, there was not a one size fits all solution, but rather that the key to successful business was thinking about what you wanted to achieve and working around that. We considered that promoting the shop further was a detraction from this core message that legal work was something to be valued and used to create maximum value in a business rather than bought off the shelf.

Delia: *What services are you offering now?*

Margaret: There are two new services we have developed which translate well into the on line environment. These are two insurance policies to help fund intellectual property litigation, one that deals with copyright and design and the other for trade marks. These products are not legal services as such but products. A creative business takes out insurance and if they have a claim under the policy because their work is infringed they can access a fighting fund to help cover the legal cost of dealing with it. These products fit in with our firm's brand in that it is mainly small to medium sized business who are most likely to benefit. An advantage is that the insurance products cannot be seen as giving advice so there is no danger of providing something that does not adequately address a clients needs.

Delia: *Is it easier to offer documents and fixed price services if you are NOT a solicitor?*

Margaret: Our web shop helped us establish our brand but it was not a money spinner. Knowing that it was unlikely to generate significant revenue, we kept the investment low and resisted offers to buy in or develop bespoke software to make the system better, for example to help a user compile documents by providing prompts and key words to include in a standard document. For this reason the overall experience that we had with the shop was good.

Selling services on line is however a problem as 'service' implies some level of input by the provider. Unless the service is intended (as we used it) mainly to build profile, it may be that the key is not to provide services but products.

Sale of products on line has a good track record outside the legal field but the sale of services on line is not so well established. We found also that simply fixing a price did not turn a service into a product since, as a solicitor, you still have a responsibility to a user as to what you are providing.

This means that it is easier for a non lawyer to offer, for example, standard documents, than a lawyer. The provider can be seen more as a publisher than an advisor with the commensurate lower level of responsibility to the user.

Delia: *What is the future of selling legal services online?*

Margaret: This will be challenging for law firms for as long as the pay structure for lawyers in the UK remains as it is today. Lawyers engaged in commercial work command high salaries and their salary expectations are unlikely to be met through the sale of bulk documents at low prices. If lawyers did choose this as a business model it may need to be quite separate from the traditional offering or operated as a totally separate business to avoid the pressure on prices that such a service may have on its bespoke work.

In the future, I think these services are far more likely to be provided by non lawyers, either working independently or as part of an organisation providing legal support such as the RAC or Tesco. Further there may be opportunities for such services in non commercial fields such as conveyancing or divorce where there is more scope for standardisation and where the pressure on pay may not be so high.

Margaret Briffa, margaret@briffa.com.

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Lessons Learned While Publishing Family Law Week by David Chaplin

Family Law Week, at www.familylawweek.co.uk, is one of the new breed of legal update sites offering free content and email updates for a specific sector. Each week commissioned articles, news stories, judgments, case digests and legislation are added to the site, all of which are free to access. Those who want to receive a weekly email summary of what's new on the site, with links back to the relevant items, can register – again for free. The paid for element is online CPD, and we have just revamped this to become an annual subscription instead of pay as you go. Each month we post two assignments, one on money and the other on children, based on the cases published that month. Those of you who have used Crimeline or Gary Webber's Property Law site will be familiar with the concept.

We set up the site for three reasons. Firstly, we could see that there is an increasing volume of information becoming available free over the internet but there is still a need to bring that information together in a structured way for a specific market, so that the end user can reduce the time spent gathering it all for themselves and also add value with our own content. Secondly, because this sort of service is part of the future of legal publishing and there was an opportunity to get in before anyone else. And finally, with over 30 years of experience between the directors of Law Week in family law publishing we just kind of thought it would be fun to give it a go.

We have been up and running for 18 months now so here are some thoughts on what we have learnt about how web publishing differs from traditional publishing, what we have got wrong and how our initial vision has matched up to the harsh reality of daily legal publishing life.

1. On the internet, always remember you are old hat

When I started thinking about the project I imagined myself as an internet pioneer, at the cutting edge of web publishing. I thought I was using the latest resources and techniques to create our vision.

That was 18 months ago. Now I do not know whether I am waving or drowning under the flood of new initiatives, techniques and features being hyped up as Web 2.0. Whereas Family Law Week is resolutely the old spoon fed web 1.0 type of resource, Web 2.0 aficionados say that blogs, collaboration, wikis and communities are the future.

They may well be right so I have to be aware that, just as we have challenged some old notions, there may be others lurking out there considering challenging us in just the same way. The only defence is eternal vigilance.

At the same time...

2. Most lawyers are still learning how to use Web 1.0

One of my greatest fears on launch was that our potential user base was not ready for us. I think I was half-right.

They have responded magnificently in signing up for our weekly email and feedback indicates that they find the site accessible. Yet there is still a distinct nervousness about the way they use the site, particularly when it comes to amending their personal details. We provide an account page for each user so that they can change contact and email details as and when necessary. Yet we continue to get regular emails asking for us to change things for them.

I do not blame them - I am happy to help. But the lesson learnt is that many of our users are what Rupert Murdoch has recently described as 'internet immigrants' adrift in alien environment and not 'internet natives'. As a result, they do not intrinsically trust accepted website protocols and will gladly look for help if they can get it.

3. As publishing gets faster, so does the law

A recent high profile case illustrates this lesson nicely. On 24 May the House of Lords published a judgment in two divorce appeals: *Miller v Miller* and *McFarlane v McFarlane*. It was published as usual on the Parliament website that morning and also on Family Law Week within an hour.

It was an eagerly awaited decision as it was hoped that it would clarify some key issues concerning conduct, equality and the length of the marriage in arriving at a fair settlement. For that reason we had regular emails from a number of users in advance of publication wanting to know when the judgment would be published so they could advise clients immediately on their own cases.

The upshot is that a judgment can now be disseminated to thousands of lawyers within an hour of its publication. Using this raw material solicitors and barristers will start to advise clients without waiting or any in-depth commentary or analysis to be prepared. Now this is not entirely novel but the scale and the speed are new and this has implications for how case law is handled in the future. In my view, there will be an onus on the judiciary to ensure that their judgments offer clear statements about the issues and conclusions in the matter. This is not always the case now but I am certain that at least informal guidelines or styles will be developed.

4. Lawyers still love paper

While planning the site I could not rid myself of an uneasy hunch that our market still prefers to read off a badly printed piece of paper rather than the latest HD flat screen. So we decided to launch a hybrid service by publishing a print ready monthly round up (in pdf) that our users can print out and read in a more traditional manner. This has proved enormously popular, but I am left with a bittersweet feeling that the web revolution for lawyers still has some way to go.

5. I must stop looking at our web statistics

Using our web stats package we can see how many people visit the site, what they are reading, how long they spend there and where they come from. This is endlessly fascinating and undoubtedly addictive: it is all I can do each morning not to log-on.

But the very existence of such statistics highlights a crucial difference between web publishing and my former life among traditional printed books and journals. In the days when I worked for a traditional publisher, our only definitive measure of whether anyone was reading our books was the number of sales made and some anecdotal evidence picked up at conferences and the like. Online, I can build a much clearer picture of what's being read and use that information to provide a service that is much more closely matched to the readerships needs.

6. I do not need a warehouse full of envelopes anymore

In my opinion, this is one of the greatest blessings of moving to web publishing. I can now publish, every week, a newsletter to several thousand readers at almost zero unit cost. No need to print invoices, manage a mailing house or form at address labels.

But the key realisation is that we can react and respond more quickly than ever before. User surveys can be out and returned within a few hours. This is not a startling revelation but after spending many years in traditional print publishing this speed of response is always surprising.

7. Keep It Simple

This may be obvious but our experiences have seared this one into my consciousness. I'll explain.

As we designed the site we would constantly think of additions and refinements that we thought would add to our users experience and set us apart from our competitors. One such idea was a hugely complex concept of creating 'online groups' that would allow a team of users to club together and buy online CPD in bulk. We devised all sorts of internal messages, invitations and management tools and spent the money on coding them. Hardly anyone has used them and we should have realised that from the start but it is so easy to get carried away. So the lesson is that the simple features are the ones that get you users.

No doubt these are just the first in a long line of lessons that we will learn as the site, our users and the web develops in the future. If you ask me what Family Law Week will look like in five years time I would be very hard pressed to give a definitive answer given the Web 2.0 changes on the way. What I can say though is that we will at all times try to take the best of what is on offer and adapt that to the needs of our readers in an accessible and practical way.

David Chaplin is a publishing, information and marketing expert with over 15 years experience at senior positions in the industry. He is Publishing Director of Law Week, a joint venture between Lime Legal www.limelegal.co.uk, and Bath Publishing www.bathpublishing.co.uk. Email david.chaplin@bathpublishing.co.uk.

Don't google Google by Nigel Miller



Google is now one of the world's best known brand names. So why does Google not want us to google any more?

When it was recently announced that the word google had entered the dictionary as a word in common usage it was, in one sense, a sign of the huge success of the behemoth search engine. In trademark terms, however, it signalled a potential problem which could prove fatal to the validity of the trademark. Google's concern is that the more we google (used as a verb), the greater the risk that Google will lose trademark protection for the name.

This is why Google recently moved to issue new guidelines as to how their name should be used with examples of appropriate and inappropriate use including these:

* He ego-surfs on the Google search engine to see if he's listed in the results. *Appropriate.*

* He googles himself. *Inappropriate.*

* I ran a Google search to check out that guy from the party. *Appropriate.*

* I googled that hottie. *Inappropriate.*

Despite the light-hearted approach, Google is pursuing a serious policy to defend the trademark protection for its brand.

The issue has become known as genericide. A genericized trademark is a trademark or brand name which is widely used colloquially as a noun or verb in relation to a particular product or service. Examples of other marks which were originally created and used as trademarks, but which have subsequently become synonymous with the common name of the relevant product or service include aspirin (coined by the Bayer company of Germany), hoover (the brand name of the Hoover Company for vacuum cleaners), cashpoint (a brand name belonging to Lloyds TSB) and escalator (a trademark of the Otis Elevator Company). Sony's Walkman brand also suffered this fate in Austria when the Austrian Supreme Court (Sony Europe v Time Tron Corp) decided that the word is now used to describe all portable cassette players.

Trademark revocation

The problem with genericide is that it can lead to revocation of a registered trademark. The purpose of a trademark is to be a badge of origin, to distinguish the goods and services of one firm from those of another. If, as a result of genericide, a trademark ceases to fulfil this purpose, then the trademark registration can be undermined.

Under s 46 of the Trade Marks Act 1994, a trade mark can be revoked on a number of grounds arising after registration. By s 46(1)(c), one of the grounds on which a trade mark can be revoked is where it has become generic. The sub-section says that a registration may be revoked if, in consequence of acts or inactivity of the proprietor, it has become the common name in the trade for a product or service for which it is registered. There is a similar provision in the CTM Regulation (Council Regulation 40/94/EC) in relation to Community Trade Marks (Article 50(c)).

An application for revocation could be made by any person; this could be, for example, a competitor or person whom the trade mark owner alleges has infringed his rights.

Avoiding genericide

In order for a trade mark to be revoked, it is not enough merely to show that the mark has become generic. It is also necessary to show that this is as a result of the acts or inactivity of the proprietor. And therein lies the solution for proprietors of successful trade marks that are at risk of being genericized. The key for the proprietor is to make sure that first, it does nothing itself to contribute to the genericide and second, it takes reasonable steps to prevent third parties from bringing about genericide. There are a number of specific measures that can be taken, including:

* adopting a trade mark policy detailing how the mark should be used – for Google's trademark policy see www.google.com/permissions/guidelines.html. This says that when you use any of Google's "Brand Features", you must always follow the Rules for Proper Usage which may include requirements as to the size, typeface, colours, and other graphic characteristics of the Google Brand Features. This policy should ensure that the trademark is used as an adjective (e.g. "a WALKMAN personal stereo"), and never as a noun (e.g. a Walkman) or as a verb (e.g. "to google");

* monitoring how the mark is used by third parties, competitors and the media and where necessary taking steps to prevent misuse by (for example) writing letters to editors pointing out inappropriate use.

In this respect, Article 10 of the CTM Regulation gives some assistance to brand owners. This says that if the reproduction of a CTM, in a dictionary, encyclopaedia or similar reference work, gives the impression that it constitutes the generic name of the goods or services for which the trade mark is registered, the publisher of the work must, at the request of the proprietor of the CTM, ensure that the reproduction of the trade mark, in the next edition of the publication, is accompanied by an indication that it is a registered trade mark. There is no equivalent provision in the Trade Marks Act.

Such letters should not threaten any kind of legal action as (save under Article 10) the trademark owner does not have any legal right to prevent inappropriate use of its marks (which is not by way of infringement); they are in the form of advice, requests, guidance which editors and media owners could observe or ignore as they choose. The PR implications of such letters should also be considered to avoid any suggestion of big-brand bully boy tactics being used, which could backfire on the brand-owner;

* whenever appropriate, using trade mark symbols (® for registered marks only) and notices (for example, "Google is a registered trade mark of Google Technology Inc.");

* running a campaign to educate people in correct usage of the mark to prevent the trademark being used as a synonym. For example, Xerox ran an extensive marketing campaign advising consumers to "photocopy" instead of "Xeroxing" documents.

While for a company like Google, it may be a losing battle to prevent the name becoming generic, so long as they take reasonable action to try to prevent it, so that any genericization is not "in consequence of acts or inactivity of the proprietor", then they may be able to prevent the trademark registrations being revoked. In the Austrian Sony Walkman case, it was material to the decision to revoke the name that Sony had not challenged the inclusion of the word "walkman" in an Austrian dictionary.

The lesson for brand owners

It may be a good problem to have but the lesson for brand owners, who do not wish their trademarks to become victims of their own success, is to develop and apply guidelines for appropriate use of the marks, maintain a watching brief on how the market uses the marks and pro-actively take steps as appropriate to ensure that "friendly" guidance is given to publishers and others who may be tempted to genericize the brand.

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Community, Democracy and the Future of Law Publishing

by Nick Holmes

This article draws together some recent posts on my blog Binary Law (www.binarylaw.co.uk) on the development of legal information services in the digital age.

The rise of social software

A phenomenon of the last two years has been the meteoric rise of services built on "social software" — services that enable people to rendezvous, connect or collaborate through computer-mediated communication and to form online communities (popularly referred to using the ill-defined and often criticised buzzword "Web 2.0"). These curious things called blogs and wikis have I suspect not escaped your notice. And you will also have encountered, if not yourself or through younger members of your family, then in the business pages, names such as MySpace and YouTube, online communities that have grown from zero to hero in a very short space of time. These services have one thing in common: they enable their users to create and share content and ideas.

There is no strict definition of what comprises social software, but common to most definitions is the observation that some types of software facilitate "bottom-up" community development, in which membership is voluntary, reputations are earned by winning the trust of other members, and the community's mission and governance are defined by the communities' members themselves. Contrast this with the less vibrant collectivities formed by "top-down" software, in which users' roles are determined by an external authority and circumscribed by rigidly conceived software mechanisms (such as access rights).

Foremost amongst social software is blog software, which enables anyone to create and publish an online journal. The communities created by bloggers ("blogospheres") are virtual ones — created via the links between blogs and the conversations which take place in the comments to blog posts. There is a sense of community even at the global level, but like-minded bloggers naturally form smaller, more tight-knit communities.

There is a small but thriving UK legal blogosphere which you can access via the Blogs catalogue in infolaw Lawfinder at www.infolaw.co.uk/lawfinder.

Wiki software enables users to collaborate and create online publications, each user being free to create content and edit the content created by others. The best known wiki is the Wikipedia, with over a million articles in English (and millions more in other languages). There is an increasing amount of UK law content on the Wikipedia and enterprising souls have set up specialist UK law wikis such as Wiki Crimeline at www.wikicrimeline.co.uk and Wiki Mental Health at www.wikimentalhealth.co.uk.

Allied with the rise of social software has been the widespread adoption of RSS, the standard data syndication format that enables publishers to "feed" latest headline data and users to pick up these feeds in their applications. RSS can be used to syndicate any type of data, but it has, in particular, been adopted by all the blogging services and is a key ingredient in the rapid expansion of the blogosphere.

The democratisation of law publishing

These developments in social software are rapidly changing the playing field in most spheres of publishing — and law publishing is no exception. Blogs enable individuals or small groups easily to publish news and comment and showcase their expertise. Many bloggers are establishing themselves as leaders in their fields and winning attention previously focused on commentators in the traditional media.

Jordan Furlong, who edits the Canadian Lawyers Weekly, has [this](#) to say about how blogs and RSS feeds will democratise Legal Publishing in the 21st Century:

“Legal publishers need to understand that the number of competitors in legal news publishing is not going to shrink - it’s going to multiply tenfold. And these competitors won’t have overhead, distribution, payroll or marketing costs to deal with - they’ll write when they want to, promote themselves by word of mouth, sell as much focused advertising as they like, and establish themselves as individual brand-name forces. ... blogs are going to create thousands of expert media outlets with a total staff complement of one. It’s already started.”

Centralised or distributed law publishing?

Wikis are effective collaborative publishing tools and have many advantages over more conventional publishing systems and many valid applications. Steve Butler at UKBlawgers [argues](#) for “a central source of legal information which is available to all at a very low price” and suggests a sort of grand law wiki as the solution.

But a wiki of the type envisaged would be an ambitious project requiring a huge amount of time from a driving organisation and a team of editors, promoting the concept, establishing the guidelines, moderating the contributions and generally keeping it in shape and pointed in the right direction. It is not often recognised that the success of the best-known wiki, the Wikipedia, is as much down to the selfless effort of the founding fathers and the thousands of specialist editors as it is to the contributions of the millions of individual article authors.

In contrast to the wiki as a centralised source, the blogosphere is a collection of millions of disparate blog sites, bloggers and commenters. Each blog has its own identity and agenda, but all are linked together via the links in posts, in comments and in blogrolls. So communities of those with shared interests quickly form through these “conversations” and a shared source of information and comment emerges.

I’d call the blogosphere and the web in general “distributed publishing”. That does not seem to be a term widely used, but I came across this abstract of an article from a physics publisher, written in 1998, which neatly [summarises](#) it:

“No one publisher or content owner can ever hope to service all of a given user’s information needs. Thus a distributed system of publishing, whereby each publisher ensures that each “knowledge pointer” in their content links to and from all the other important knowledge pointers in given subject areas, ensures that users can go on “information trails”. These trails become a voyage of discovery and the junction points on these trails can often be databases, which aim to provide some comprehensive cover of a subject.”

The problem with the large law publishers is that they do attempt “to service all of a given user’s information needs” in the legal domain. But the centralised source, however large and impressive, does not satisfy. We each like to pursue our own voyages of discovery. The same goes for smaller publishers attempting to cover more limited domains. There will always be good stuff out there that they don’t control and of course a vast corpus of public sector information that they would be foolish to republish.

Free law — then what?

There has been a huge improvement in the provision of “free law” this decade: starting with the establishment of

BAILII, continuing with the ongoing and increasing provision of government, parliamentary and court documents, and finally culminating in the long-overdue Statute Law Database whose public release is slated for December.

But the incumbent law publishers are not going to wither any time soon because of this. At present LexisNexis, Westlaw and other specialist law publishers win and retain business not just because they provide comprehensive access to up-to-date law, but because of their valuable added commentary and other features. The freeing up of legal information will begin to have significant impact only when the potential for leveraging and adding value to that information is better understood. Marry the increasing amount of independent commentary from the web with the free, comprehensive and up-to-date source materials and they will start to hurt.

There is no shortage of willing authors out there, but most like to do their own thing. Making sense of this widely distributed information and forging online communities is the focus of most current web development: search, syndication, aggregation, tagging and social networking.

Nick Holmes is a publishing consultant specialising in the legal sector and is Managing Director of Information for Lawyers Limited. Nick blogs on legal information issues at www.binarylaw.co.uk and manages the infolaw UK legal web portal at www.infolaw.co.uk. email nickholmes@infolaw.co.uk.

Finding Good Website Content

A call for ideas from Keith Arrowsmith

We all know that websites become stale quickly. The occasional redesign will give a fresh feel, add new facilities, or improve accessibility, but this kind of root and branch work is costly and tends to take place at irregular intervals. Between these upgrades, how do you keep the day to day content up to date?

Most small to medium sized law firms seem to outsource the website “design and build” work, and many sites now boast an easy to use back-end management system. However, the same enthusiasm for outsourcing does not seem to be present for updating the data.

hlw, at www.hlwlaw.co.uk, is a mid-sized commercial law firm based in Sheffield and Leeds, providing regional organisations with a comprehensive service covering all relevant aspects of commercial legal matters.

We do not have an internal dedicated marketing team. The lawyers help with marketing and the IT team help with updating, but we recognise that out of date news on a website does not reflect well on a busy practice. A specialist marketing department would be overkill, but the number of experienced copywriters able to produce regular newsletter-type stories for print and web publication seem to be shrinking. EMIS have recently decided to pull out of this market place, leaving the list of providers on Delia’s website (www.venables.co.uk/servcontent.htm) surprisingly short.

We encourage our lawyers to become more actively involved with their pages on our website, but how do other readers make sure their website content is well written, accessible, timely and relevant?

Keith Arrowsmith, keitha@hlwlaw.co.uk.

Current Issues with Email - and some solutions by Kieran Gilmurray

Note: There was also an article by solicitor Jeremy Holt on Staff Computer and E-mail Policies in the May/June 2006 issue, at www.venables.co.uk/n0605computerpolicy.htm. There was a downloadable specimen computer and email use policy (in Microsoft Word format) with that article at www.venables.co.uk/n0605computerspecimen.doc. The present article takes an IT Director's view of the problem.

Email is an essential business tool. Email is easy to understand. Email is attractive because the technology is a very close analogy for snail mail, which is universally understood. Nearly everyone has it or uses it. It works regardless of time zones, age, (dis)abilities or even language. Email works on MY time, not on YOUR time. Email can be accessed anywhere in the world from a desktop pc at home to an internet café in Kathmandu.

All this is largely because email enjoys the industry standard protocol of SMTP which ensures that any user in the world can use email, no matter what email client software they are running or what computer they are using (e.g. Linux, Mac, pc, telephone, PDA, etc.).

However, in spite of email's almost universal success, it does not come without issues. This article looks at some of the issues - and some of the solutions.

Exposure to unwanted content and damage to corporate image

Anecdotal evidence suggests that most legitimate email is personal and non-business email even in a work context. How many joke emails have you received today? These may contain harmless humour but harmless humour to you or me may not be harmless humour to others. Some emails contain graphic images which are akin to pornography or contain descriptions of personal actions that should remain at the bedroom door. I think we all remember the details of an email doing the rounds last year of a lady performing a personal act on her boyfriend and the damage to reputation of both the individuals and the firms they worked for.

Risk of viruses resulting in financial loss or downtime

Most firms use Microsoft email technologies and these are the systems attacked most often. Virus programs can be relatively trivial (your address book contacts are mailed some random message) or can have significant damaging effects (your computer could become a spam relay point resulting in your email domain being black listed worldwide or your computer systems may stop working altogether).

Decreased productivity

Email is addictive. You know you have become addicted when you become agitated if you are prevented from checking your email for more than a few hours! Individuals constantly interrupt their work to check mail. Spam is a massive problem that accounts for more than 60% of email and obscures relevant messages. How many lotteries have you won this week? Email "harvesters" constantly circle the web hovering up unprotected email addresses from company web sites and these are sold on.

Data theft via industrial espionage

Before the age of computers, stealing information from a company involved lugging large quantities of equipment or paper past your colleagues or boss. Now, at the click of a button, the company contacts or accounts system can be emailed to your competitor.

Email is not a secure medium outside of a company unless using encryption methods

Many individuals think nothing of typing all sorts of things into an email that would feel uncomfortable whispering to their colleague a desk away. This can include contracts for business deals, corporate gossip, financial results or instructions from or to corporate clients. Email can easily be intercepted and read as it passes between computer systems on the internet.

Damage to personal reputation via emailing to individuals or groups

Hands up if you have ever sent a message without thinking to the wrong person! Everyone has done this. Email is immediate and cannot be retracted if sent outside of your corporate mail system.

DeadMan's Handle - stops data theft in its tracks

Losing your notebook might be expensive - but losing your data could be catastrophic.

Your notebook is gone - what was on it? Valuable client details in the wrong hands; your personal information being examined by a thief: a nightmare scenario.

DeadMan's Handle stops that happening the moment your missing notebook is turned on.

Unauthorised access leads to deletion of all designated information and the program itself: no indication is left that there was anything of importance on the machine. Data and configuration files are gone: your systems are safe.

DeadMan's Handle is a new approach to security. It has won a 9/10 "Editor's Choice" award from "What Laptop", a UKT&I innovation award and a nomination for the coveted European IST award.

For more information, visit DeadMan's Handle at www.deadmanshandle.com.

Email is not guaranteed

We all think that emails get to the people we send them to each and every time. However, emails can be blocked by spam filters incorrectly configured, rules configured incorrectly, data corruption, mail server failures or incompatibility between mail systems.

Email makes us lazy and poor communicators

We depend on email systems too much. Rather than ring a person 3 desks away we are emailing them instead; a phone call, or even a personal chat, could be better. Do your clients or suppliers have a personal bond and loyalty to you from having spent time chatting to you as a person?

Some Solutions

There is no single magic bullet to solve all these problems. However, a proactive and multifaceted approach to IT and email security can help.

Treat email as a business tool

The email system is a business tool and should therefore only be used in an appropriate business like manner (even in the case of personal use). So.....

1. Email policies should be documented, understood and enforced. Email users should be educated as to what they should or more importantly should not be doing and policies should be enforced through appropriate filtering software.
2. Let users know that the email system is company property and not personal property from day one to minimise objections.
3. Let staff know you are monitoring mail systems and that you do so to discourage inappropriate email usage and information theft.
4. Set your company mail limits to permit emails of only a certain size into and out of your company to stop employees emailing databases home.
5. Add an acceptable email and internet policy document to new staff members' company induction packs that they must read and require them to sign a confirmation sheet saying they have done so.
6. Training in how to use (and not use) email systems should form part of company induction training. Employers must discipline and be seen to discipline employees for breeches of email policy. However, not all poor email behaviour is deliberate. Employees need training and help before you start waving a big stick.
7. Encourage your suppliers and clients to use encryption software when sending emails to ensure privacy when sending sensitive emails.

Limit spam

External email computer companies can clean and filter email before it even gets to your network. Alternatively there are many desktop filtering packages on the market that can be trained to filter email effectively over time. When you do get spam, never respond to it or attempt to remove yourself from the list; this just tells the spammer that your address is functional! Functional email address lists are valuable property. Never request more information, do not click on any links and do not buy anything (if you have medical problems, go to your doctor)!

Limit email address harvesting

Email harvesters are automated software applications which roam the Internet in a similar method to search engine robots, they travel around visiting web pages and

gathering email addresses to be stored in a database. Email harvesters are common. If your email address is displayed on a web page without protection, it probably won't take long for harvesters to find it. Some simple methods can be employed to limit this:

1. Place contact forms online instead of email addresses. *(Note from Delia: I disagree with this one - they could be called contact discouragement forms. Personally, I hate contact forms and never use them. What do other people think about this?).*
2. "Encode" the address using JavaScript so harvesters can't see it but real people can.
3. Display the address using an image file so robot harvesters can't see it.

Email borne viruses

Many of the most common computer viruses or similar malicious software types are spread through email attachments. The virus is often launched when you open the file attachment, usually by double-clicking the attachment icon.

1. Do not open any attachment unless you know from whom it has come and preferably that you are expecting it. Otherwise, delete it immediately.
2. Use antivirus and spyware protection software and keep it updated.
3. Use an email program with spam filtering built-in or employ a third party email cleaning company
4. If you need to send an email attachment to someone, let them know you'll be sending it so they don't think it's a virus.
5. Keep your operating system and applications up to date with appropriate security patches and fixes as security vulnerabilities are what viruses writers exploit.

Improve productivity

Many people leave their email client running continuously so they know when a new email arrives - which is the main reason why email affects productivity. If you leave your email client running, it means anyone anytime can interrupt what you're doing. Essentially someone else is picking the moments at which you pay attention (including some spammer offering some rubbish get rich quick scheme).

So.....

1. Check email at fixed times such as before you start work, after a meeting, after lunch, before you go home, etc. Set aside time to do this. Just don't let others dictate the timing.
2. Decide when you can email and when you should speak to someone face to face or on the telephone. For example, detailed technical discussions are better using face to face communications to prevent email tennis matches starting.
3. Be judicious as to who you send email to. Do you really need to cc everyone into an email who may only have passing interest yet may feel they need to respond or add their input?
4. Simple emails which say "thanks" or "got it" or "see you at the meeting" are polite and part of normal human communication, but there is a limit. There is no need to reply "you're welcome", or "glad you got it", or "great, I'll see you, too" each and every time.
5. Encourage communication face to face or on the telephone so such soft skills are not forgotten. A "no email Friday" once a week or once a month can help here.

Used ineffectively email becomes a liability but when used correctly, email becomes being an effective and productive business resource.

Kieran Gilmurray is the IT director of major Northern Ireland firm Wilson Nesbitt Solicitors, www.wilson-nesbitt.com. Email kgilmurray@wilson-nesbitt.co.uk.

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New ClearMarketing Package from ClearPeople *Marketing your law firm costs less than you think!*

How much money do you spend on printing brochures every year or advertising in the press? Yet you still don't know whether these forms of promotion have succeeded in expanding your client base? Perhaps not at all? Have you thought about using your website to promote your firm?

ClearPeople have put together a **ClearMarketing Package** for law firms. Basically, this consists of a new, professionally designed website with the ability to be easily updated and furthermore it will be optimised so that prospective clients can find your firm easily! The package includes:

- * Custom web design and branding to meet your unique requirements.
- * Full control to manage your website easily, using ClearControl Content Management System (CMS). For example, you can update staff and solicitors details, create or update legal practice areas, etc.
- * Forms to collect CVs and other relevant information through your website.
- * Secure web and database hosting with website statistics to monitor visitors to your website.
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Call us on +44(0)8701 999 910 to arrange a meeting, or visit our website: www.clearpeople.com.

LegalMoves Launches Online

LegalMoves is a current awareness publication that tracks lawyers and other professional staff as they are promoted, move positions or take on additional appointments within the UK legal profession. LegalMoves has been available as a pdf service for over 12 months and is now being launched as an online searchable database to further enhance the service. One subscription to LegalMoves online offers multi department organisation-wide access to the system and there is no need to worry about usage levels as unlimited access is allowed. Costs are on a sliding scale from £240.00 to £485.00 per annum for the online service.

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