GDPR – the dust is settling

By Eduardo Ustaran

The panic has receded. The frantic drafting has slowed down. The GDPR – widely regarded as the most ambitious data protection legal framework ever created – is in place and life goes on. As the dust left by the dramatic coming into effect of the GDPR settles, we are beginning to see what the GDPR means in practical terms. Many questions remain unanswered and many aspects of the law will take years – if not decades – to be fully interpreted and understood. However, among the numerous issues covered by the GDPR, some areas are emerging as the key strategic questions to address and becoming the focus of attention at an operational level.

Is enforcement happening?

One GDPR-related question appears to overshadow all the others: when will enforcement happen and how strict and heavyweight will it be? So much has been said in recent times about the infamous 4 per cent of the worldwide annual turnover as a measure for fines that, in a morbid kind of way, the expectations are sky-high. This has the effect of disrupting not only the approach to compliance - which is too often tainted by efforts to simply avoid negative consequences – but also the understanding of the reasons for regulatory action. The primary role of regulators is to ensure compliance and they have plenty of tools at their disposal to achieve that. Enforcement will undoubtedly happen and as enforcement actions take place, we will be able to calibrate what is seen as a big deal.

In the meantime, it is possible to predict what worries the regulators. Both the guidance issued and the current regulatory action point in a clear direction. As the UK Information Commissioner’s Office has stated, breaches of the law involving novel or invasive technology, or a high degree of intrusion into the privacy of individuals can expect to attract regulatory attention at the upper end of the scale. Similarly, the Irish Data Protection Commission has indicated that it will be targeting those engaged in intensive online tracking and profiling, as well as companies which use emerging technologies or which are intensively engaged in automated decision making.

All of this seems to suggest that any technological development that is particularly aimed at exploiting the value of personal data at a large scale is likely to be closely scrutinised. This is helpful to know as there are tools in the GDPR, such as data protection by design and by default, and data protection impact assessments that are ideally placed to identify and address the privacy risks resulting from new technologies and data uses. So a clear message to take on board is that whilst we have yet to see a spectacular enforcement action, it is essential to be alert to the regulators’ priorities and consider at the outset the implications of sophisticated data uses for privacy.

Power to the people

One of the greatest – and perhaps most surprising - achievements of the GDPR has been its ability to bring privacy and data protection into the mainstream. At pubs, at supermarkets, at schools, in the real world … people talk about the GDPR. It’s slightly surreal. That has in part led to an unexpectedly high increase in the exercise of data subjects’ rights. Time will tell if the

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volume of requests experienced so far will decrease, increase or remain constant, but dealing with all types of data subjects' requests currently demands a far more dedicated approach than ever before. Dealing with data subjects' rights is not easy because most of these rights are not absolute rights. They cannot be ignored but they often involve careful thinking about the limits to be applied, the rights of others and the practicalities of honouring those rights. As with many other European data protection matters, having a process in place is key and following it is essential.

Implementing a process to handle requests from individuals who wish to exercise their data protection rights starts with mapping out the decision-making that goes into it. The GDPR establishes a number of rights – some longstanding ones, like the right of access, rectification or deletion, and some new ones, like data portability – but in every case, the steps to take tend to follow a similar pattern:

- identification of the individual;
- rigorous management of timeframes;
- appropriate use of parameters and exemptions permitted by law; and
- effective engagement with the individual to meet their expectations.

Honouring data subjects’ rights should not be business-crippling. It should be part and parcel of operating in the digital economy and it will certainly pay off to approach this in a planned and organised manner.

International data transfers are back

Speaking of putting processes in place, there is an issue that was somewhat put to one side in the crazy days of pre-GDPR panic and is coming back as a major concern: international data transfers. It should be pretty obvious by now that global data flows are essential to the digital economy. It’s how the internet works and the bread and butter of today’s digital world, from cloud computing and mobile communications to e-commerce and social media. However, European data protection law has retained its traditional hard core approach of restricting data transfers to non-EU countries and this continues to be a visible area of concern.

Transfers of personal data to the US in particular are under constant scrutiny. For starters, after nearly two years in operation, the criticism that the EU–US Privacy Shield receives from all sides is still relentless. Fairly or unfairly, the abrupt end of the original Safe Harbor framework that led to the creation of the Privacy Shield still casts a shadow over its robustness. The fact that the European Parliament has called on the European Commission to suspend the Privacy Shield is indeed worrying and a sign that even if the Commission still defends the framework as a valid one, regulators are likely to remain wary.

Even more preoccupying is the referral by the High Court of Ireland to the Court of Justice of the European Union (CJEU) of a number of critical questions about the validity of the European Commission’s Standard Contractual Clauses (SCC) for transfers. The SCC are by far the most relied-upon mechanism to legitimise international data transfers, so the fact that the CJEU has been tasked with determining the validity of the existing model clauses is a serious concern.

Against this background, partly by design, partly by elimination, Binding Corporate Rules (BCR) have emerged as the go-to solution for any organisation seeking a robust yet flexible approach to legitimising global data flows. BCR top the list of options available in the GDPR for this purpose, and regulators appear sensitive to this situation. It is probably not a coincidence that one of the first actions of the newly created European Data Protection Board (EDPB) has been to reiterate the regulators’ most recent guidance on BCR. In a nutshell, with the coming into effect of the GDPR, the EU regulators are clearly endorsing the role of BCR as the main enabling tool for lawful data transfers worldwide.

E–Privacy as an added complexity

Looking ahead, high on the list of most troubling issues is the relationship between the GDPR and the evolving EU e–privacy framework. The level of unease is particularly noticeable around the interaction between the requirement for a lawful ground for processing and the strict obligation to obtain consent for the use of tracking technologies. Can internet profiling rely on “legitimate interests”? Is my “cookie wall” approach compatible with freely given consent? Will the forthcoming e–privacy regulation change anything and, if so, when? These are difficult questions because the answers have tangible practical implications.

Something that is certain is that from a European public policy perspective, e–privacy is an additional necessity to what the GDPR already provides, not an alternative. That means that we should be prepared to continue to operate with this two-tier approach for the foreseeable future, whilst acknowledging that the law in this area is almost as dynamic as the technological developments.

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Image: GDPR and ePrivacy cc by Convert on Flickr.
Open access to case law – how do we get there?

By Daniel Hoadley

Open access to case law in England and Wales is in a very poor state of health, both in terms of the amount of case law that is freely accessible to the public and in terms of the sustainability and development of the open case law apparatus in this jurisdiction.

It is true that the launch of BAILII in the early 2000s radically improved the public’s ability to access judgments and continues to provide a service of immense value. However, the simple fact is that nowhere near enough judgments from England and Wales’ superior courts are available on BAILII.

Efforts to increase public access to the decisions of judgments in this jurisdiction are being hampered by a range of systemic obstacles, including a general lack of awareness among judges, government, practitioners and commentators that a problem even exists, and a lack of understanding of how the judgment supply-chains in England and Wales works and why it is defective.

Why provide open access to case law?

More clarity on the objectives of the provision of open access to case law is a good starting point. Being clear on what it is that we are trying to achieve allows us to more robustly assess our progress against the goals of open access and, perhaps more importantly, understand the obstacles that need to be overcome.

“Open access to case law”, to my mind, boils down to providing access that is free at the point of delivery to the text of every judgment given in every case by every court of record (ie every court with the power to give judgments that have the potential to be binding on lower and coordinate courts) in the jurisdiction, save where restrictions have been imposed preventing the dissemination of the judgment (for example, where national security concerns or the identification of vulnerable persons is a risk).

The goal is first and foremost about providing access to the words used by the court when giving judgment in every case.

If I’m right about the goals of open access to case law, the next question we need to be ready to answer is: why bother providing free access to the text of all judgments given in every court in the first place?

There are at least four justifications for the provision of open access to case law.

The rule of law

In common law systems such as England and Wales, judges, in a broad range of circumstances, are able to make new laws or modify the scope of existing laws. There are any number of ways of casting that statement into tighter, more legalist language, but the essential point is that the words used by judges can, and often do, change the list of rules that govern what we can and can’t do and the penalties we are liable to incur if we break those rules.

Because of this, in an ideal world, We, the People would have some way of finding out what those rules are so that we are able to regulate our conduct to ensure we do not violate them and to know what our rights are if we suffer as a result of someone else’s breach of the rules.

The closer we move towards the open access to case law goal, the closer we get to being able to identify the rules that we are required to abide by.

The equality of arms

Accurately ascertaining what the law says on a given issue is far from straightforward. Even the most apparently trivial legal problems potentially involve issues of substantive or procedural law that require the skill and expertise of a practising lawyer to marshal.

The party to a dispute with access to a lawyer should in theory have at least two advantages over the party that does not have access to a lawyer:

- the advisor will have expertise in the substantive law and procedure applicable to the dispute; and
- the advisor will have the advantage of multiple, industrial-strength tools to help them determine what the applicable law actually says.

The party to the dispute who lacks the means to access these two resources is therefore obviously at a correlating disadvantage. They’re outgunned and probably outnumbered. There is an inequality of arms. Cuts in legal aid and, in many cases, the absence of legal aid altogether, increase the number of disputes in which one side is bringing a knife to a gunfight.

The closer we move towards the “open access to case law” goal, the greater our ability to resolve disputes before they go anywhere near a court or some other costly method of dispute resolution.

Dispute reduction

The ability to form a reasonably accurate view of what the rules say on a given issue increases our ability to intelligently pick our battles and to resolve disputes before they go anywhere near a court or some other costly method of dispute resolution.

It may be hard to swallow, but if a litigant-to-be at least has the means of establishing that they probably do not have a leg to stand on (or has the other side bang to rights), more disagreements can be dealt with before lawyers get involved.

The closer we move towards the “open access to case law” goal, the greater our ability to resolve disputes before they evolve into nasty, expensive and protracted echoes of Jarndyce v Jarndyce.

Transparency

Courts are public institutions, financed by public funds. Judgments are their unit of activity. Those units of activity should be open to public scrutiny and study. Judgments are public information (unless, there’s a good reason to keep their content secret).

It may well be that nobody ever bothers to look at them, but that’s not the point. The point is that if judgments are only meaningfully accessible on systems we have to pay to access, they are not meaningfully accessible to the public.
How open is case law in 2018?

We are able to assess the current level of “openness” of case law by comparing the number of judgments available on BAILII for any given year against the number available for the same year on the major UK online research platforms.

The analysis that follows is based on a side-by-side comparison of the quantity of judgments available on BAILII between 2007 and 2017 with the quantity of judgments available on three major UK subscription services, JustisOne, LexisLibrary and WestlawUK.

The following courts were included in the analysis: Administrative and Divisional Court, Chancery Division, Court of Appeal (Civil Division), Court of Appeal (Criminal Division), Commercial Court, Court of Protection, Family Court, Family Division, Patents Court, Queen’s Bench Division, Technology and Construction Court.

Data and analysis

According to a high-level analysis of the number of judgments available on each platform for the period 2007 to 2017, JustisOne ranks first with 74,010 judgments published, LexisLibrary has 63,148, Westlaw 51,813, and BAILII comes in last with 30,583.

Assuming JustisOne’s total for the period represents the totality of available judgments, the “open law deficit”, namely the number of judgments that are inaccessible on BAILII is 43,427.

Coverage by year

The chart plots the number of judgments published on each platform for each year. Apart from the fact that BAILII is shown to be well behind the commercial platforms year on year, two interesting patterns emerge. The first is the sudden drop in volume of coverage on JustisOne and LexisLibrary from 2017, which is attributable to a sharp decline in the number of judgments from both divisions of the Court of Appeal and the Administrative Court published on their platforms. The second is the stability of BAILII’s curve, which is commented on later.

Coverage by court

An analysis of the data for each publisher’s coverage by court provides a clearer view on where BAILII is falling short. By and large, BAILII’s coverage roughly tracks the coverage provided by the commercial publishers, except in both divisions of the Court of Appeal and the Administrative Court where BAILII’s coverage lags far behind.

Accounting for BAILII’s lack of coverage

The data clearly demonstrates that there are serious gaps in BAILII’s ongoing coverage. Why do those gaps exist?

The judgment in any given case can be given in one of two ways. The first is known as a “hand down”, which is where the court reserves judgment at the conclusion of argument and returns to court at a later date with a written judgment in hard copy. Courts tend to reserve judgment in complex or serious cases. Electronic copies of handed-down judgments are routinely sent to BAILII for publication by the clerk to the judge giving judgment.

The second method by which a judgment may be given is known as an “extempore” judgment, which is where the court delivers its judgment orally very soon after the conclusion of argument, often within a matter of minutes. One would expect judgment to be given extempore in straightforward cases that do not involve complex issues of law or fact and, for this reason, they
confer the practical advantage of enabling the court to give judgment immediately.

Notwithstanding the efficiencies conferred by extempore judgments, they present significant challenges when it comes to opening them up for public access.

An oral judgment is captured by the court’s recording equipment as it is delivered. For BAILII to be able to publish these judgments, it needs to be able to obtain the transcribed versions of them. The process governing the transcription of the recordings of extempore judgments into a form suitable for publication on an online platform is needlessly complex and beyond the scope of this article to examine comprehensively. However, it is sufficient for present purposes to focus on the transcription of extempore judgments from both divisions of the Court of Appeal and the Administrative Court.

Transcription of extempore judgments

The Ministry of Justice or HMCTS (it is currently unclear which), outsource the transcription of extempore judgments to the private sector. Under the current contracts, all extempore judgments given in the Administrative Court (including the Divisional Court) are transcribed by a company called Opus2. All Court of Appeal extempore judgments are transcribed by a company called Epiq.

So far as I am able to tell, Opus2 and Epiq’s business models are premised on two streams of revenue. The first stream of revenue comes from the state (ie the Ministry of Justice/HMCTS), which pays the transcription companies to transcribe the judgments. The second stream of revenue comes from legal publishers and litigants – the former group purchasing transcripts in bulk for republication in raw form or for use in a series of law reports, the second group purchasing transcripts on an ad hoc basis, presumably to consider grounds for appeal.

The main publishers of case law in England and Wales (Thomson Reuters, LexisNexis, Justis and the Incorporated Council of Law Reporting) pay large annual sums to these transcription agencies for an ongoing supply of judgments for reuse. BAILII cannot afford the sums involved and is therefore unable to obtain the same data.

The current arrangements governing the transcription of extempore judgments run completely counter to the tenets of open access. Moreover, public funds are being spent but no public benefit is ever realised (indeed, the Ministry of Justice ends up paying twice because it also needs to buy licences to the platforms).

I noted earlier that the curve of BAILII’s coverage is stable. The reason for this is that in the absence of the extempore judgments, BAILII’s coverage is confined to judgments handed down. The stability in the curve is reflective of the year-on-year steadiness of the number of handed-down judgments.

The way forward

This article has attempted to demonstrate that BAILII provides only partial access to the total number of judgments given in England and Wales’ superior courts each year. This will remain the case unless and until the Ministry of Justice and HMCTS recognise that a problem exists and that it is within their power to solve.

Two paths are available for the government. The first is what I would refer to as the open access “lite” model, under which government would continue to outsource extempore judgment transcription on the proviso that the transcription agency provide the Ministry of Justice with a copy of each transcript as soon as it becomes available, which could then be provided to BAILII for publication at no charge.

The second path, which I favour, I would refer to as the open access “ultra” model. Under this model, the government would bring all transcription in house and the transcripts would be made available online by the government in a form that is suitable for republication, reuse and data analysis (much like primary legislation on legislation.gov.uk).

Either way, nothing will change until the powers that be recognise that there is a problem, take the necessary steps to understand the mechanics of the problem in detail and set about tackling it.

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LinkedIn – the lawyer’s media channel of choice

By Alex Heshmaty

LinkedIn, acquired by Microsoft in 2016, has over 250 million active monthly users and, according to research from Attorney at Work (http://bit.ly/2BaFfQg), it is the most popular social media channel in the US legal sector, used by over 90 per cent of lawyers and forming part of the overall marketing strategy in around 70 per cent of firms. It is likely that these statistics broadly translate to the UK. LinkedIn’s popularity has increased within legal circles over recent years, with Brian Inkster, founder of Inksters (inksters.com) citing its better rates of engagement: “I used to think LinkedIn was deadly boring compared to Twitter (which was my social media channel of choice). However, over the past year or two my views have changed. If I post a similar item on LinkedIn and Twitter it invariably gets more interaction and usually much more detailed comments on LinkedIn than on Twitter.”

Although LinkedIn commands only around 10 per cent of the monthly active users of Facebook, (which we covered in the March issue of the Newsletter http://bit.ly/INL1803heshmaty), it is nevertheless arguably much more useful for lawyers, both in terms of reaching their target audience and as a personal tool.

How is LinkedIn used by lawyers?

Many lawyers and prospective lawyers initially create a LinkedIn profile primarily for the purpose of uploading their CVs and planting their personal flag in the shifting sands of the internet. Some firms and barristers chambers encourage their fee earners and tenants to maintain their LinkedIn profiles, even going so far as to dispense with traditional profile pages on their websites in favour of LinkedIn links.

In addition to the benefits of such online profiles, the ability to publish legal comment and analysis on LinkedIn and engage with other opinions is a way for lawyers to demonstrate their legal knowledge and expertise to current and prospective clients.

As to direct advertising, the model on LinkedIn works in a similar way to that on Facebook, using profiling and targeting to ensure adverts reach the desired audience.

We look in more detail at how lawyers can take advantage of LinkedIn’s facilities below.

Optimising profiles

The printed curriculum vitae is increasingly being superseded by the cultivation of a favourable online presence for all manner of professionals, not least lawyers. As a result of its good search engine rankings, LinkedIn profiles often appear at the top of Google when researching the credentials of an individual, which makes it particularly important for solicitors and barristers who want to make the right first impression. But how can profiles be tweaked to stand out from the crowd? Joanne Frears, solicitor at Lionshead Law (lionsheadlaw.co.uk), suggests that lawyers avoid stock phrases in their profiles, such as “I am an expert in/have 20 years’ experience in…” and vague marketing fluff such as “I have worked on a myriad of high value complex deals, for many different clients from a wide range of sectors.” Instead, she urges fee earners to: “describe what you do in terms your market will recognise, not those that lawyers use in their own jargon - and if you are a solicitor know that a client already expects you to be an expert! Add cases and projects you’ve worked on where you have permission, add endorsements and don’t be afraid to ask for them directly via LinkedIn.”

Rachel Tombs, owner of Orion Legal Marketing (orionlegalmarketing.co.uk) and LinkedIn coach, emphasises the value of testimonials: “Asking current clients to write recommendations on your LinkedIn profile is an excellent way of building trust in the mind of potential new clients. Online recommendations are word-of-mouth marketing for the digital age.” She also suggests that lawyers consider including relevant keywords in their profiles to ensure anyone searching for specific expertise has a better chance of finding them. She also notes the importance of regularly updating profiles: “When did you last take a look at your LinkedIn profile and ask yourself if it reflected who you are today?”

In addition to personal profiles, as with Facebook, firms can create business profiles using company pages and tie these in with any relevant advertising. Furthermore, they might ask their lawyers to publish articles on the company’s LinkedIn page rather than via their own profile pages (eg in order to retain control over content if the fee earner moves firm).

A publishing platform

Publishing articles, comment and analysis to demonstrate knowledge and expertise was a traditional marketing tactic for law firms well before social media or even the internet. Blogging has been effectively (and often ineffectively) used by lawyers in recent years as a way of publishing their thoughts and insights without having to pitch to and/or pay third party publications for the privilege. LinkedIn takes pitch-free publishing a step further, with the distinct advantage of automatically providing visibility to a user’s connections and followers as new posts show up in their feeds.

Joanne Frears says of LinkedIn articles, “like advertising, you have an opportunity to embed your message with your community and to demonstrate your knowledge. Wit and brevity are always well received. Technical knowledge is an expectation so be prepared to demonstrate that too.” But she warns that accuracy of content is crucial: “Typos, repetition and overly long sentences simply demonstrate you don’t check your work, don’t have attention to detail or don’t know when to stop – the opposite of what a client wants from their lawyer!”

As well as demonstrating knowledge and expertise, effective publishing on LinkedIn can also build up a readership and increase profile views over time. Rachel Tombs notes: “I recently had feedback from one of my clients, a senior partner in a law firm, that following
their first post on LinkedIn they had over 100 new followers, and their profile views were up 40 per cent through regularly blogging on LinkedIn Publishing every fortnight.

Networking and engagement

Compared to blogging, the “social” element of LinkedIn means that there is generally more engagement on LinkedIn, and this has been a noticeable trend according to Brian: “Historically blog posts I wrote would get a lot of comments on the blog itself; now what happens on LinkedIn rather than on the blog. What I do now is copy those comments over to the blog post to preserve them, otherwise they will soon be lost as social media moves onto the next topic of the day.” And, in the spirit of social media, it’s just as important to engage with the posts of others. “Make your time on LinkedIn as much about sharing other people’s contributions as your own” says Rachel, “Look at posts your connections have taken the time to post and then leave comments, or share them”. However, whenever making comments, lawyers should always bear in mind that LinkedIn is used as a professional networking platform; lolcats, flirting and trolling are inadvisable.

Choosing who to network with will be a subjective choice. Some lawyers may decide to focus on connecting with potential clients, like Joanne: “I won’t LinkedIn with lots of other lawyers (unless they are foreign lawyers in my field) as they aren’t my market.” Others may use LinkedIn for general discussion with peers as much as prospecting, and Brian notes that: “You can have private LinkedIn conversations with a group of contacts and I have seen that as invaluable in exchanging ideas and information.” Either way, there are plenty of ways of connecting with people, from creating and joining relevant groups to allowing LinkedIn access to your contact list or viewing its recommendations.

Legal recruitment and advertising

LinkedIn is a useful tool for solicitors seeking a new job opportunity as well as for law firms looking to recruit fresh talent. Lawyers who are thinking of moving on can indicate their availability to recruiters by switching on the relevant setting in the Career Interests section (linkedin.com/jobs/career-interests) and providing specific details such as location, start date and sector. LinkedIn’s Job Search app is available on the iTunes and Google Play stores. But even just posting articles and engaging with updates can land potential candidates a job. For example, Brian Inkster reports that a recent employee was hired at his firm as a result of seeing their LinkedIn post looking for work.

Law firms can use LinkedIn’s recruitment tool (business.linkedin.com/talent-solutions) and place targeted job adverts. Rachel notes the significant savings which can be made compared to more traditional methods of law firm recruitment: “Posting a job advert on LinkedIn is a relatively inexpensive way to find candidates and a budget can range from £10 a day upwards depending on location and position etc. Compare spending £200 to finding the right candidate to paying a recruitment company 20 per cent of the candidate’s salary.” Joanne’s firm has been able to reach lawyers making a career move in this way: “Lionshead Law advertises on LinkedIn and gets many responses from people looking to change the way they work.”

Law firms can also place other types of adverts on LinkedIn (business.linkedin.com/marketing-solutions/ads), promoting their services to individuals in specific business sectors or on the basis of all manner of variables. LinkedIn advertising works in a similar manner to Facebook advertising or Google AdWords, with daily budgets and auction style bidding.

Further reading

Law Society of Scotland: How in-house lawyers can get the most from LinkedIn http://bit.ly/INL1811linkedin2

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Legal information online in the Republic of Ireland

By Paul McMahon

The principal types of online law sources in the Republic of Ireland are as follows:

- legislative material published by the State;
- legal publishers’ materials pitched at the legal professions, subject to subscription;
- general citizens’ rights and business information;
- information and guides published by various statutory bodies on their activities;
- a number of legal blogs on particular topics; and
- articles on legal practitioners’ websites.

Legislation and case law

The Irish statute book was largely inaccessible, even to practitioners, until recent years. The Irish statutes and statutory instruments were put onto CD-ROM in 1998 and made available online. They are now on the Irish Statute Book website (irishstatutebook.ie) and are also published on BAILII.

It is only within the last 10 years that most of the pre-independence (1922) statutes have been published on the Irish Statute Book website. Before that, the Irish Stationery Office (now long closed) directed persons looking for those statutes to HMSO / TSO in London. In practice, they were available in a handful of libraries.

In contrast to the practice in England and Wales and in Northern Ireland of publishing series of Revised Statutes from the middle of the 20th century onwards, “official” revised statutes were not published in Ireland, until relatively recently. The Irish Attorney General’s office has gradually revised and published online, administrative consolidations of over 300 frequently used acts (revisedacts.lawreform.ie).

As in the United Kingdom, most case law has been published free online in Ireland since 1997. The most common points of free online access are through the Courts Service website (courts.ie) and BAILII.

Commercial publishers

There is a considerable market for UK texts and online access to UK materials in Ireland. In the key common law areas, UK texts and the current editions of Halsbury’s laws are widely purchased, both in their hardback form and now more commonly, in online form. UK case law is extensively cited in the Irish courts.

Many Irish legal practitioners have a hardcopy library or online access which includes one of the main UK law report series, Halsbury’s Laws of England, Practical law, the Encyclopaedia of Forms and Precedents as well as the Common Law Library and other practitioners’ texts.

Most of the main international legal publishers have a presence or associate relationship in the Irish market. There are several smaller scale publishers who do not publish material online. Some publishers publish their own textbooks with complimentary online access or with online access only.

Round Hall is associated with Thompson Reuters and has published over two hundred legal texts, an Annual Review of Irish law and Annotations to the Statutes over the last 30 years. Thomson Reuters Round Hall publishes CDs and online material as Westlaw IE.

Westlaw IE has an Irish offering with access to selected case law, some consolidated legislation, some journals and online versions of approximately 30 of their Irish textbooks on a subscription basis.

Justis publishes the online version of the Irish reports and Digests, the “official reports” published since 1866 by the Incorporated Council for Law Reporting in Ireland. This is offered on a stand-alone basis or with other material, including UK material. Practitioners may subscribe for an Irish offering or for a wider UK and Irish offering.

Bloomsbury Professional has an Irish law offering, with books, loose-leaves and online services for lawyers. Its primary areas include property; company; employment; tort; banking and finance; commercial; and intellectual property, with a diverse collection of other practice areas covered. Its online services cover the following areas: property, company, employment, wills & probate.

Blackhall Publishing publishes hardcopy texts with or without online access principally in the area of consolidations of key legislation and court rules. Clarus Press publishes over 50 titles with journals, students and practitioners’ texts.

There is nothing comparable to Halsbury’s laws of England, Halsbury Statutes, the English and Empire Digest / the Digest, the Encyclopaedia of Forms and Precedents or Practical law. Many Irish practitioners subscribe to these services and adapt them for use in Ireland.

State material

The Irish State publishes basic Citizens Information at citizensinformation.ie. This is similar to the GOV.UK site. The information is user-friendly and deals principally with issues of concern to private citizens. It contains broad overviews of the legal and practical position in the relevant areas. Its short articles contain links to the state agencies, relevant to their specific subject matter, eg the Revenue Commissioners, the Department of Social Protection etc.

The Irish Single Point of Contact under the EU Services Directive (pointofsinglecontact.ie) publishes information on licensing and business topics. The site largely contains links to the relevant agencies such as Health and Safety Authority, the Workplace Relations Commission, the Companies Registration Office, the Competition and Consumer Protection Commission and the Revenue Commissioners.

Law firms and bloggers

Many legal firms publish articles on an ad hoc basis in relation to areas of interest. Some solicitors have written quite detailed client orientated material on their particular areas of practice.

There are a number of bloggers who comment on areas of interest to them and to the public. Some do so from an academic perspective while others do so principally from a practice marketing perspective. Some have elements of both.
Why is all this information not very helpful to ordinary people?

- The online statutory and case law material is of very little practical use to non-lawyers and almost impossible for the non-experienced user to understand. The explicit plain English approach to statutory drafting has not been adopted in Ireland.
- The online material produced by commercial publishers in the core legal areas is too technical and expensive for most non-legally qualified users.
- The material on public sector websites varies in its depth and relevance and is often very simplistic. Coverage of important topics is sporadic.
- The better and more comprehensive material on State Agency websites typically provides guidance on particular issues but does not attempt to systematically set out to explain the relevant field. Much of the material is aimed at practitioners.
- The State websites do not cover the core legal areas taught in law schools that are essential to understanding legal issues. Typically, they publish information on public services or private rights. They are good, for example, on employment and consumer rights, but simply do not cover critical areas such as civil liability, property law, contract, banking and the sale of goods.
- Most blog sites are quite specialist and deal with a particular area. They do not seek to provide a simple introduction or overview of the area, but more commonly deal with quite specific topical issues.
- The material available on law firms’ websites does not usually give too much away. It typically covers recent matters of interest. It is commonly in particular niche areas or is a very general overview of a particular topic. It is rarely designed as a stand-alone useful explanation of the subject matter.

The Irish Legal Guide

To redress these failings I wrote and published the Irish Legal Guide (legalguide.ie) which seeks to simplify the law and make it available to the public at large. It is aimed primarily at businesses and private persons who want to gain an understanding of legal issues. It is not a substitute for legal advice but should assist users in purchasing legal services in a rational and informed way. They should be in a position to deal with their lawyers from an informed perspective.

The Guide seeks to present a concise but comprehensive overview of all areas of Irish law. It summarises the legislation and/ or common law on each topic in approximately 3,000 articles. The subject matter is organised in a familiar hierarchical tree structure so that the user can open down three branches from the top, through the relevant topics and subtopics, to the relevant article.

Each article contains an extensive list of references and sources and also contains a “Legal Materials” tab giving access to the original legislation, sample case law or other public sector material. The Legal Materials are themselves indexed so that the user opens an index of sections and case names and navigates down one further level to see the relevant section or sample case.

The content will ultimately cover the same broad range of topics as Halsbury’s Laws of England. This includes many areas for which there is no current Irish textbook or secondary source. There are at present over 750 articles on the website. This covers the areas of law relevant to doing business in Ireland. A further 250 articles covering tax, competition and intellectual property will be added in the coming months. Its content and structure can currently be reviewed at legalguide.ie/service/all. Click down three levels to the index to find the relevant article.

Over 600 further articles, covering property, litigation, civil liability, environmental law (in a very broad sense) and EU law which is in draft form and is intended for future publication in the Irish Legal Guide have been published on McMahon Legal Blog mcmahonsolicitors.ie.

Further material covering public law and regulation is being added at present, which will bring the total number of further articles on this site near to 1,000 in the coming months.

Irish Legal Guide is a subscription website with subscriptions starting at €40 for the first three months. Any user can sign up with their email address for a no obligation one-week trial.

And finally, Brexit websites!

I have published another site called Brexit Legal (an Irish Guide) (brexitlegal.ie). This contains over 450 articles dealing with the various legal issues which Brexit raises. Approximately 60 per cent of the content is my summary of the issues concerned and a further 40 per cent is republished public sector information from the UK, the EU and the Republic of Ireland. This is a free site with no subscription or registration requirement.

I have copied most of this content onto a further site called Brexit Legal Issues (brexitlegalissue.co.uk). I intend to include further UK specific Brexit material drawing on and trying to make manageable, the enormous quantity of UK and EU public sector material available on Brexit. This is a free site with no subscription or registration requirement.

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The state of legal blogs

By Delia Venables

Legal blogs have been mainstream since the mid-2000s. Originally they seemed very modern, but now they seem rather ordinary. One has to ask “what are they for?” That is where the topic becomes interesting again.

Blogs are pretty normal now; but they are not necessarily called blogs and are used in a number of ways:

- individual thoughts on current legal developments – the classic blog;
- industry updates for clients – most large law firms have extensive blogs, suites of blogs or update sites, including Pinsent Masons (OUT-LAW), Simmons and Simmons (Elexica), Herbert Smith, Kingsley Napley, Field Fisher, Hogan Lovells, Clyde and Co …;
- law updates for lawyers – many of the blogs described below are in this category, with leading examples being the ICLR Blog, Current Awareness from the Inner Temple Library, Free Movement Immigration Law Blog, Panopticon, UK Human Rights Blog and the UK Supreme Court Blog;
- subscription information services – free and paid;
- magazines which provide information in a more literary way than just nuggets of information but which are still purveyors of legal information topics (for example this Newsletter);
- news sources – this was a new idea in the early 2000s but this has largely been overtaken by Twitter where the news can be found literally as it happens.

A selection of good legal blogs

Below is my personal selection of interesting legal blogs. Apologies to all the other excellent legal blogs not mentioned! There is a more extensive list of legal blogs (from which this selection is drawn) on my web page [www.venables.co.uk/blogs.htm](http://www.venables.co.uk/blogs.htm). Links to all the blogs listed below will be found there.

Nick Holmes maintains probably the most comprehensive (and up to date) catalogue of legal blogs anywhere in the infolaw Lawfinder Blogs section [www.infolaw.co.uk/lawfinder/blogs](http://www.infolaw.co.uk/lawfinder/blogs).

**Azrights News and Media** covers intellectual property, internet, technology, online business law, litigation, branding and all things digital. The blog is provided by Shireen Smith, the firm’s founder. People who will find this blog useful range from one-person entrepreneur to large businesses, including the classic blog; examples being the ICLR Blog, Current Awareness from the Inner Temple Library, Free Movement Immigration Law Blog, Panopticon, UK Human Rights Blog and the UK Supreme Court Blog.

**BarristerBlogger** comes from criminal barrister Matthew Scott of Pump Court Chambers, who specialises in serious crime, including murder, serious sexual and violent offences, offences against children as well as cases involving drugs and fraud. His blog provides legal comment, argument and discussion on these topics. He won the Comment Awards 2015 Best Independent Blog.

**Current Awareness** from the Inner Temple Library provides up-to-date information regarding new case law, changes in legislation and a wide variety of legal news, which library staff think will be of interest to lawyers practising in England and Wales. The content is selected and updated daily with a wide variety of entries on most days.

**Cyberleagle**, Graham Smith’s blog on law, IT, the internet and new media. Graham Smith is a private practice lawyer based in London, dealing with IT, internet and intellectual property issues. Fewer topics covered than in some blogs, but in considerable detail.

**DavidsonMorris Immigration Blog** is very comprehensive and informative in covering all aspects of UK immigration law with real time updates on changes to legislation, as well as keeping an eye on global immigration.

**LexisNexis Family Law** provides analysis of market issues for family lawyers. The increasing demise of family legal aid, the economic downturn, changes to the court system and a raft of legislative changes are reshaping the family law market. Family lawyers need to adapt their services, whether by changes to fee structures, increased use of ADR or simply by being more responsive to client needs.

**Family Law Blog** comes from Andrew Woolley and his team, at Family Law Firm. The blog covers recent case law and other interesting cases and provides their views on a wide variety of family law related issues.

**Family Lore** is a blog from solicitor John Bolch covering serious and not-so-serious posts on the subject. The second blog Family Law Focus for more serious material which provides family law news, including legislation articles and a full list of blogs around the world on family Law.

**Free Movement** on immigration law was founded by barrister Colin Yeo and is written by him and other legal experts in immigration. It provides updates and commentary on immigration and asylum law and is a key source for information and procedure on this topic.

**Gherson**, an important immigration firm, maintains a blog on wide ranging Immigration topics including Brexit issues, business immigration, extradition, human rights, EU Law, nationality and immigration issues around the world. The blog is kept well up to date with several substantive posts a week.

**ICLR Blog** provides news, analysis, comment and updates from ICLR’s case law and UK legislation platform and includes Weekly Notes from ICLR. The posts are categorised by legal topic so that threads can be followed through to the present position. Prepared mainly by Paul Magrath, Head of Product Development and Online Content at ICLR, this blog deserves to be at the top of any lawyers “must look at” sites.

**Ipkat** has been covering copyright, patent, trade mark, infotech and privacy/confidentiality issues from a mainly UK and European perspective since 2003. With frequent posts, this is a very significant resource.

**Jack of Kent** (David Allen Green) provides “a critical and liberal blog about law, policy, and other things.” He provides frequent and in-depth posts on the legal and societal issues of today. He is a barrister and a solicitor and also writes for The Guardian, The Financial Times, The Lawyer and New Scientist. He is a major source of informed comment about Brexit.
JMW, a large and outward looking law firm in Manchester, provides an interesting blog covering many topics including family and children, sport, injuries, hobbies, marriage and cohabiting, divorce, pets... whatever is topical (and sometimes controversial) with a legal angle!

**Landlord Law Blog** comes from Tessa Shepperson, a solicitor working in residential landlord and tenant law. She also maintains the Landlord Law site which provides a lot of free information on issues for landlords and tenants and also sells a variety of "packages" of information and documentation from the site. The blog is newsy but serious and well informed.

**Laurence Kaye on Digital Media Law** comes from Laurie Kaye of Laurence Kaye solicitors. It is an extensive and thought-provoking blog about the future of digital media and the law which covers this.

**Life Law NI** is a Northern Ireland blog which aims to provide information on all legal matters surrounding family life. The blog highlights any special features of the law related to Northern Ireland and comes from Claire Edgar and Karen Connolly at the Belfast firm of Francis Hanna & Co.

**Mathys & Squire** is one of Europe's most highly regarded intellectual property firms. They provide a News and Insights section with frequent posts on major IP topics in the UK, Europe and elsewhere.

**My Scottish Law Blog** comes from Bruce de Wert, a Scottish solicitor at Georgesons Solicitors of Wick and Thurso in Caithness. The blog is updated frequently with postings on Scottish divorce, Scottish powers of attorney, Scottish wills and topics relating to property law and estate agency.

**Nationwide Employment Lawyers** provide news, comment and information on a wide range of employment topics. The posts are particularly well catalogued and cross referenced so you can find the topic you are looking for with ease.

**Nearly Legal** housing law news and comment is a blog by a group of barristers and solicitors including Giles Peaker, one of the longest-standing legal bloggers who is experienced in housing and landlord and tenant law. The site provides updates, case reports and comment on housing law and related matters. The archives contain case reports on pretty much every relevant High Court, Court of Appeal and House of Lords case since 2007, as well as some county court and Lands Tribunal judgments. They also have updates on statute, links to other resources and a page of housing news feeds from other sites.

**Panopticon** covers information law and is maintained by members of 11KBW's Information Law Practice Group. Information law is about the right to know, the right to keep private and the boundary between those rights. It encompasses areas such as data protection, freedom of information, the protection of private information under article 8 of the European Convention on Human Rights, breach of confidence, and the regulation of surveillance. The name apparently comes from Jeremy Bentham's proposed new model prison, in which constant surveillance would be a tool for moral regeneration; it has become an enduring metaphor in debates about the benefits and the dangers of systematic information-gathering.

**Pink Tape** is a blog on family law from barrister Lucy Reed at St John's Chambers in Bristol. The blog aims to enhance the quality of public information and debate about legal matters and about family law in particular. She is also a founder member of the Transparency Project (see below).

**The Transparency Project Blog** describes itself as "Correcting, clarifying or commenting on media reports of family court cases; explaining or commenting on published judgments of family court cases; and highlighting other transparency news." Posts are frequent, varied and well presented. The The Transparency Project is a registered charity which aims to explain and discuss family law and family courts in England and Wales, providing useful resources to help people understand the system and the law better.

**UK Human Rights Blog** is associated with One Crown Office Row and aims to provide a free, comprehensive and balanced legal update service. The intention is not to campaign on any particular issue, but rather to present both sides of the argument on issues which are often highly controversial. Posts cover a huge range of legal issues, from human rights, to public, medical and environmental law. The blog has a searchable archive of case reports and comments dating back to 1998 and also delivers a weekly Rights Round-up. The cases are taken from domestic courts and the Strasbourg court involving human rights points that demonstrate the impact of the European Convention on domestic law and also explores the practical impact of these cases for practitioners.

**UK Supreme Court Blog** (UKSC blog) comes from Matrix Chambers and the Litigation Department of Olswang LLP, which is now part of CMS. The authors are solicitors and barristers specialising in litigation and with a particular interest in the work of the UK Supreme Court.

**WardBlawg** covers Scots and other laws from around the globe. It aims to provide content from the best minds in the Scottish legal profession, while also providing the most recent news relevant to Scots lawyers and businesses both those domiciled in Scotland and those established elsewhere looking to set up or develop their business in Scotland. The blog was started by Gavin Ward. The blog also deals with academic legal topics, particularly ones related to Scotland.

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### Why blog?

**By Nick Holmes**

Blogging is a simple, cheap, efficient, effective way to publish and update time-sensitive information, particularly in constantly-changing fields such as the law. Blogging puts in your hands publishing power even greater than that which was the preserve of only large, established publishers with fat wallets not so long ago. Content management, feed generation, subscriber management, search engine optimisation: all is built in for free. That's reason enough for almost everyone and
every organisation to consider blogging.

Blogs are not just a publishing format, but a networking tool, a means to reach out and engage with an audience; and blogging is not just about publishing, but about conversing and contributing. That’s how blogs started out – with the desire to share thoughts and “write out loud”.

Writing in the now defunct Solicitors Journal, David Allen Green offered a considered list of reasons Why some lawyers should blog, and why some should not (http://bit.ly/2zU80uo):

“Blogging allows the lawyer a different type of creative freedom that cannot be done in any of the other forms of legal writing, and I contend there are three reasons why all lawyers should consider blogging ... and one reason why they should not. ... [first] it enables the lawyer – from a student to a retired judge – to develop as a lawyer ... [second] it helps you connect with others – from potential clients to professional peers – on terms that show what you are good at and what interests you ... [third] it promotes the public understanding of law and the legal profession. ... The one bad reason to blog is to do it just for the sake of it.”

For reasons to blog, I prefer to look back to early proponents of blogging who recognised the potential of this new literary form. Andrew Sullivan, writing in The Atlantic in November 2008 on Why I blog concluded (http://bit.ly/2zU80uo):

“The blogosphere has added a whole new idiom to the act of writing and has introduced an entirely new generation to nonfiction. It has enabled writers to write out loud in ways never seen or understood before.”

This “writing out loud” is what Robert Scoble and Shel Israel dubbed Naked Conversations in their 2006 book of that title, subtitled “How Blogs Are Changing the Way Businesses Talk with Customers”. The core thesis concerned communicating authentically and making a connection with an audience.

From a business perspective, if you have something to contribute in your field of expertise, simply by showing who you are on your blog, you will engage with your peers and your market; and by showing what you know, you will promote yourself without the need for glossy brochures, calculated networking or other self-promotion that may not sit easily with you.

Of course, most individual lawyers don’t have the time or the inclination or the talent to blog though they may see the benefit in so doing. In the absence of any committed bloggers within a firm, the law firm news blog might seem like a reasonable compromise. But understand that you are competing with the very best law news sources nationally.

Law firm blogs need to be focused (usually on a particular practice area), to have personality (usually meaning it’s not “the firm” but individuals or small groups that should blog) and to be engaging (providing comment and analysis and perhaps stirring things up a little) or to deliver some other value that cannot be found elsewhere.

The Internet, Warts and All

Reviewed by Nick Holmes

The Internet, Warts and All: Free Speech, Privacy and Truth by Paul Bernal is not a law book; it is a book about seeking to understand an environment – the internet – in which the law operates. It is a book about law, but “It is also ... about technology, about politics, about psychology, about society, about philosophy.”

Regulating the internet impacts all these.

Whilst the internet started off as a communications medium and an information resource and, for business, a marketing opportunity, it now underpins almost every aspect of our lives and is integral to the way our society operates. We need to face up to and accept the fact that the internet really is a mess. The way through this mess requires balances and compromises which change as the technologies develop.

Paul argues for “community-based symbiotic regulation”: “a subtler and more nuanced” form of regulation needs to be adopted appropriate to the “messy, unruly, complex, interlinked and dynamic environment that is the internet.”

To set the background for the ensuing discussion, he first exposes three myths and asks questions:

- the illusion of permanence – who should control what lasts?
- confusion over perfection – who should guide us through this imperfect and unreliable archive?
- the neutrality myth – can corporations be neutral?

Subsequent chapters examine in depth the many issues relating to free speech, privacy, surveillance, trolling and fake news currently facing us in our use of the internet and challenging the existing legal and regulatory framework.

The many case studies cited illustrate in some cases what works, but in many cases what doesn’t. For example, the section on the failure of the Samaritan’s Radar app demonstrates how misunderstandings of how technologies and platforms work lead to unintended consequences, sometimes with the opposite effect to that intended.

The internet is a massively diverse and complex place. Myths, misconceptions and misunderstandings about how it “works” abound and the power the internet giants wield is immense. Paul seeks to guide us towards how it might be tamed.

This book is an absorbing read for anyone concerned about the power of the internet. It deserves a much wider audience than its price tag suggests it might achieve.

The Internet, Warts and All: Free Speech, Privacy and Truth by Paul Bernal, Senior Lecturer in IT, IP and Media Law at the University of East Anglia.


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