Internet Newsletter for Lawyers & Law 2.0

Making the most of the legal web — January/February 2008

Software as a Service – going mainstream in 2008

By Delia Venables

There are many words and phrases associated with Software as a Service (SaaS), including .net (dot net), hosted services, managed services, web-native, web services, browser based software, remote access software and outsourcing of IT. Whilst coming to the topic from somewhat different angles, all these phrases are really referring to the same central theme – that the software you use can belong to someone else and can run on computers somewhere else whilst still enabling the "job" to be done.

You do not pay to own the software but rather to use it, over the internet. The availability of fast, cheap and reliable broadband is a key to these new types of development; without it, there would be no SaaS.

Costing may be based on a usage model or on a flat rate or on some combination of the two but SaaS will in any case be cheaper for the user initially, requiring little or no capital investment. In addition, the need for IT staff and expertise can be greatly reduced since upgrades and "patches" are installed by the SaaS provider and fewer computers are needed in house.

Another advantage, for smaller firms in particular, is that they can use the same software as their larger competitors without the major up-front and ongoing costs they would have had to absorb in the past. Subject to the nature of their contract, they can also decide that they do NOT want to continue with particular software, after a period of using it, which would otherwise be a massive cost and disruption.

A different type of advantage relates to power use and environmental concerns; the power consumption of a shared facility will be considerably less than an in-house facility with its own multiple processors, cooling, back up facilities. emergency power generators and so on. As the costs of power go up, this cost advantage will become more pronounced.

There is also an advantage for the software supplier since each individual user does not need to have the system installed on their premises, with attendant requests for special features and training generally. The costs of installation at multiple premises is a major cost (and problem) for most software suppliers.

Freedom to work anywhere, as illustrated by e-know.net

There is yet another advantage of SaaS is in terms of Business Continuity; the larger companies providing the services with multiple users can afford a higher level of physical security as well as multiple levels of back-up and extra hardware, "just in case".

Service-level agreements (SLAs) generally govern the quality, availability, and support commitments that the provider makes to the subscriber.

Methods of hosting

SaaS can be run in two main ways:

(1) The software supplier can host the application themselves, perhaps with other standard Microsoft applications as well, so that the user can achieve an overall software service; legal software companies doing this include:

- Pracctice, with Osprey software (www.osprey.tm), which has been providing hosted practice management for 4 years; they were probably the first company to bring in a .net system;
- Quill (www.quill.co.uk) with Pinpoint Legal, with 10 years experience of providing an online service (the .net version is more recent). There are 200 practices using their services and Quill can provide a cashiering service as well if required;
- DPS (www.dpssoftware.co.uk) are now installing most of their smaller users as SaaS users, with servers based on the DPS premises and collocated (backed) up at Telecity;
- Mountain Software (www.mountainsoftware.co.uk) with Meridian Law Connected, the leading Chambers system now available over the web as SaaS. (Mountain is now part of the Iris Group).

(2) A third party can host the software, ie neither the supplier of the software nor the end user but a

"Managed Service Provider", "SaaS Facilitator" or "Managed Hosted Services Provider" (all theses terms mean essentially the same thing). This is a major service company that hosts software from a number of "Independent Software Vendors" (ISVs) and supplies the services to the end user. Examples include:

- e-know.net (www.e-know.net) which hosts applications for Axxia (www.axxia.com) dna practice management as well as Microsoft Office products and around 100 other software applications (non legal) for other customers.
- 7global (www.7global.com) which hosts applications for LexisNexis Visualfiles (www.visualfiles.com) as well as many non-legal software suppliers.
- ADSPortal (www.adsportal.net) which hosts the SOS practice management system Virtual Practices (www.virtualpractices.co.uk). ADS Portal will also host a customer's own choice of software applications in an "online desktop"; virtual solicitors firm NetworkLaw use ADS Portal to host their software.

Other types of software can be hosted in various ways. Tricostar (www.tricostar.com) have recently won an award for deploying their web-based time recording and file matter management software across the legal departments of County, Borough and District Councils in Suffolk – large and small councils, all using the same hosted software to manage the legal work they do. Where the servers are located is becoming almost irrelevant for the users.

Past coverage of SaaS

In this newsletter, we have been covering SaaS (under various names) throughout 2007. You can find all these articles on www.infolaw.co.uk/newsletter under the index subject "Software as a Service".

In the March/April issue, Steven Bradley of Chambers Technology Support (www.ctsltd.net), a company which facilitates outsourced IT for Chambers, asked "Who needs an IT Department?" He described how many IT services are already outsourced via the internet including web site hosting, e-mail hosting, chambers and practice management, telecoms provision and typing and dictation.

Also in the March/April issue, I covered some of the accounts and practice management systems which can now be outsourced, including Quill, Pracctice and SOS, as well as case management by ConveyanceLink and EasyConvey.

In the May/June issue, Charles Black of Nasstar (www.nasstar.com) described hosted email in some detail – how it is done and the pros and cons of entrusting the provision of email services to a third party. Nasstar provide a wide variety of hosted services and a Hosted Desktop.

Also in the May/June issue, Nick Holmes asked "Does IT Matter? and looked at the way that IT is becoming a commodity – another way of describing SaaS.

In the same issue, I summarised the characteristics of six virtual firms and looked in particular at the software they use since SaaS is crucial to the operation of most virtual firms and is also enabling many "real" firms to get some of the benefits of being virtual without abandoning their premises entirely.

In the July/August issue, Sunil Radia of UKTyping (www.uktyping.com) covered a whole range of outsourcing trends and possibilities, including transcription, archiving and storage, litigation discovery and disclosure, bulk conveyancing, simple drafting, accounting and legal cashier duties. He concentrated on the type of service where a human being is involved with the outsourced process, rather than "just" a computer.

In the September/October issue, solicitor and mediator Graham Ross (www.themediationroom.com) looked at online dispute resolution. Essentially, the software to underpin the mediation process is available as a service, leaving the management and human skills part of the transaction to the lawyer.

In the same issue, Doug McLaughlin of Axxia (www.axxia.com) described how practice management systems have evolved to the present point where the software for even large firms can be run online and can integrate with Microsoft Office applications – themselves now also available in hosted versions.

In the November/December issue, Jan Durant of Lewis Silkin described the options available for remote access and flexible working including Blackberrys, Windows Mobile devices, VOIP, Outlook Web Access, Virtual Private Networks and hosted access solutions (which provide the security to use remote access for particular applications).

Throughout the coming year, we will doubtless return to this topic again and again, since it is now fast becoming mainstream IT.

Words of caution?

Yes of course! All new IT developments should be looked at critically before leaping onto the bandwagon. Here are a few points to consider:

- Attempt to work out how the costs will compare over a period of several years.
- What sort of service level agreement (SLA) are you offered?
- Are you satisfied with the guarantees of confidentiality and security offered?
- Have you talked to other users of the service offered?
- If you are the first user of the software offered in this way, expect a large financial incentive.

Internet Newsletter for Lawyers & Law 2.0 is edited and published by Delia Venables and Nick Holmes
ISSN 1467-3835 Subscriptions: UK and Ireland £45 p.a. Overseas £50 p.a. Multi-use licence £75+VAT p.a. (6 issues)
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Information and online subscription and subscriber access to the online version are at www.infolaw.co.uk/newsletter
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Digital media and the law

By Laurence Kaye

"Law 2.0", "digital media law". Great tag lines but is it all "sound and fury", signifying nothing new? After all, there are plenty of examples of how existing laws are being applied to the online world. Are the law and Web 2.0 an odd couple fated to be forever out of sync? Alternatively, are we moving slowly but inexorably to a position where the law will move seamlessly between the digital and physical worlds?

In exploring these themes, I want to examine whether there is anything really new and whether the world of Law 2.0 has distinctive features and, if so, what the messages are for the media industries and business generally.

Liability for third party content

Liability for third party content, including user generated content, is the hot potato of Law 2.0. To what extent should search engines, social network sites, forum operators, etc, be liable for content they make available? To what extent can they claim exemption under the ISP immunities?

The current legal framework in the EU is under strain and there are two main reasons. First, the law is pre-Web 2.0: it was developed in the mid to late 1990's, before the growth of search engines and social networks. Second, advances in software to search and filter content have raised questions about whether service providers need to take any active steps to detect and remove illegal content in order to rely on the exemptions.

The E-Commerce Directive contains three categories of exemption for ISPs and other intermediaries from civil and criminal liability for carrying or hosting illegal content. The immunity is 'across the board', applying to all kinds of liability including copyright infringement and defamation.

There are several key points to note about these ISP immunities, which are built around the principle of 'hear no evil, see no evil, do no evil':

- The "mere conduit" exemption applies provided that the ISP doesn't initiate or interfere with the transmission.
- The caching and hosting exemptions require the service provider to act "expeditiously" to remove or disable access to unlawful content in certain circumstances.
- Article 15 removes any obligation on service providers to monitor content in order to qualify for these immunities.

However, in a recent case in Belgium the Court imposed a duty on an ISP to use filtering technology in order to claim the exemptions. This case suggests that technological advances will impact on how the exemptions are interpreted, thereby encouraging intermediaries to take a proactive role in dealing with illegal content.

Even if an intermediary is granted immunity from liability under one of the exemptions, rights owners may seek injunctions against intermediaries as a way of getting at a primary infringer. In a recent case, a chat forum operator was ordered to reveal the identities of certain members of the site who had posted defamatory comments. In deciding whether to grant this type of order, a court will consider the individuals' right to respect for their private life and their rights and freedoms under the Data Protection Act 1998. This brings us neatly on to …

Privacy

Search engines and social network sites have become aggregators and users of personal information. The law is struggling to hit the right balance in this area. Data protection laws vary across jurisdictions and often seem over-complex and too focused on a "tick the box" approach.

Privacy and data protection are moving up the business and legal agenda. Social network sites need advertising revenues; advertisers want eyeballs and, more than that, data about user's preferences, interests, purchasing habits. That's why some groups are calling for a comprehensive review of data protection laws.

But before we change the law, we should address some fundamental questions: (1) do users understand how their data is being used? (2) do they care? Probably, the answer to both is "no". How many users of Facebook realise that unless they change default settings, details are published to your "friends" via the Mini-Feed and News Feeds whenever the user edits his or her profile information, joins a network etc? And with the increasing use of third party applications, that data

can find itself in the hands of third parties outside Facebook.

Data protection law is built on the notion of consent: that we agree – through "opt in" or "opt-out" – to the use of our data. Legal compliance is achieved through a combination of user terms and conditions, privacy policies and default settings, which potentially enable sites to share data with affiliates etc. Data protection compliance, with a focus on (informed) consent, is located at the commercial heart of Law 2.0.

Jurisdiction

What does jurisdiction mean where there are no geographic boundaries or divisions between the real and virtual worlds? The answer is – quite a lot. There are several international legal instruments that apply to cross border disputes. Brussels I (to work out which country's courts have jurisdiction); and Rome I (contractual disputes) and Rome 2 (non-contractual disputes, eg copyright infringement), to decide which country's laws apply to the dispute.

Asynchronous law

This is a permanent state suffered by the law (and lawyers!) whereby the law is always behind – and even occasionally ahead – but never in sync with the online world. Typically, it takes about 5 to 10 years for new legislation to move from initial idea to adoption as law and for the Courts to work out what it means.

Softlaw

This could also be called "fastlaw". It comprises ways of shaping policy without introducing formal legislation. Examples are Codes of Conduct and Recommendations introduced by the European Commission. These give a clear message on how online businesses should respond to market changes without a legislative "big stick". This is useful in a rapidly changing and uncertain world where legislation will either be too slow or plain wrong.

This trend is increasingly apparent in the world of self regulation, admittedly being pushed along by media owners. The Principles of User Generated Content Services and YouTube Video Identification tool are the leading examples.

Technical standards

In the digital world, technical standards play a major role in determining how digital goods and services are exchanged. Although legislation may provide the overall legal framework for what can and can't be done with copyright content, standards control what happens. In that sense, standards are a kind of "de facto" law.

Digital Rights Management (DRM) is "an umbrella term for a range of technologies for managing the buying and selling of intellectual property rights in digital form" (EPS, now part of the Outsell Group). In the Web 2.0 world, sites such as Facebook are becoming platforms for the exchange and delivery of content.

In this environment, machines have to speak to machines – the "semantic web". Here, DRM is an enabler. It is about the application of a machine-readable language and grammar to digital content in order to describe the rights that are associated with the intellectual property. It may be "copy without restrictions"; "copy three times"; "store and delete copies from cache after a given period", etc. And it's possible that these permissions will not be enforced through technical protection measures.

So we may be seeing the role of DRM changing from policeman to accountant, helping to make sure that the right guy gets paid, who could be anyone from the solo digital photographer or designer through to "big media".

Regulation

The European Union's upcoming Audiovisual Media Services Directive distinguishes between revised, "traditional style" regulation of television broadcasting ("linear services") and a so-called "light touch" approach for on-demand services ("non-linear services"). Getting the right approach to infrastructure and content regulation is, needless to say, a major challenge.

"It's the content, silly"

It's no so much that content (or, for that matter, the consumer) is king. If "paradigm shift" means anything in the context of the Web, it's that content is no longer tied to a specific method or platform of delivery. Digital audio, podcast, e-book, CD, print on paper, mobile music, TV etc. What this does is place the need for a strategic approach to the creation, protection and management of intellectual property assets at the top of the business agenda. In the work we're doing for clients, this message has really hit home.

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Company Law Forum

Company Law Forum (www.companylawforum.co.uk) from LexisNexis is the first attempt at a substantial Web 2.0 site from a "mainstream" law publisher. It is intended to provide an environment for the legal and business community to share insights and discuss company law-related issues.

It is free to access; registration entitles you to create a profile, publish opinions, comment on opinions, ask questions in the forum, answer forum questions, comment on and rate news, and message other users.

There are several substantive articles on company law topics together with frequent news items and opinions.

There will also be news and current awareness headline feeds shortly.

Given the detail of its functionality, it looks like this is LexisNexis' pilot for a range of similar services.

Eleven years of Internet Law with Graham Smith

We do not generally cover books in the Newsletter but occasionally there are exceptions – and *Internet Law and Regulation* by Graham Smith and other lawyers at Bird & Bird, now published in its fourth edition, is an exception. Graham has been writing and editing editions of this book for 11 years and is one of the leading internet lawyers in the UK.

The first edition, in 1996, was 150 pages and Graham had to explain in the preface why such a book was necessary. The latest edition is 1,400 pages and he does not need to provide any such explanation. The book addresses key areas of contention such as copyright, trade marks and domain names, cross-border liability, internet payments, online contracts, advertising, defamation and data protection in an international context. Newer emerging areas are also covered including encryption, obscenity, freedom of speech, tax and competition law.

Here is what Graham says about the book.

The style of the book is narrative. We explain the taxonomy of the internet in the first chapter – not so much internet technology, but more the variety of internet actors and their functions. We then build on that skeleton through the discussion of the various legal topics covered in the book. The underlying taxonomy, incidentally, has changed little through the editions. The evolution of the book has been a process of adding more flesh to the skeleton rather than redesigning the frame.

We attempt to cover every internet-related topic that is likely to come up in practice. We illustrate important themes with examples from cases and legislation in numerous countries. Even where we do not provide clear cut answers, we hope that the reader will find something that stimulates thought on the question.

While the book is primarily an English law textbook, it is increasingly also a comparative law resource. In the fourth edition, most of the case citations are non-English cases. The book is intended to be of use to private practice lawyers and in-house counsel alike, including those outside the UK who practise in the field or work for an online business.

What are the big issues at the moment? The popularity of peer to peer filesharing and the subsequent emergence of social networking content platforms such as MySpace and YouTube has reignited the debate over the extent to which online intermediaries should police, and be liable for, the activities of their users. The main spark point is, as ever, copyright infringement. The original conflict between internet service providers and rights owners seemed to have been settled with the introduction at the turn of the millennium of liability safe harbours for conduits, caches and hosts. Now that settlement looks increasingly fragile.

The whole area of cross-border liability is as uncertain as ever, with little consensus over the extent to which internet activity located abroad must be targeted at a country before incurring exposure to its laws and the jurisdiction of its courts.

Internet activity has, over the years, evolved through text, images, music and now to video – each type of content more valuable than its predecessor. Video can be seen as the last battleground, over ways of addressing infringing activity and in the debate about whether content should be subject only to general laws or regulated as if it were broadcast. The effects of the Internet having stormed the video bastion will certainly be felt in 2008 and beyond.

Despite all these new developments, I do not think that governments should be rushing in with a new law for each new situation and unless and until the existing law is found wanting there should be a presumption against further legislation. As to the form of any legislation that may be required, let there be a presumption against regulation of a discretionary nature, in favour of known, certain laws capable of general application.

Internet Law and Regulation, 4th edition, by Graham Smith, is published by Sweet & Maxwell at £195 (order from www.sweetandmaxwell.co.uk/internetlaw or 0845 600 9355).

There is an updating site at www.internetlawbook.com and the book will also soon be searchable online when it is

Legal research in England and the USA compared

By Susan Doe

I first need to tell you a bit about my own experience. I have worked in law firm libraries for 16 years, first with Nabarro (commercial work with an emphasis on property), then with Winckworth Sherwood (parliamentary, police, housing, ecclesiastical) and now with Sidley Austin (US, with the London office specialising in international finance). I am currently responsible for the library, research services, know how and intranet development amongst other areas. I am also responsible for library and research services in the three European offices – Brussels, Frankfurt and Geneva.

In addition, a team of five PSLs are responsible for training and producing know how, standard forms and value added current awareness tailored for Sidley's own lawyers and specialisms. The Library team of six people at Sidley provide research services, current awareness and monitoring, and develop and administer the know how database and intranet.

My experience in managing Library and Information Services in London and in the US has resulted in the emergence of a general theory of my very own. US and English/Welsh (E&W) trained lawyers use internet sources for research differently (I do not have personal experience of legal research in Scotland).

There are exceptions, but in general E&W lawyers look for as few sources as possible – ideally one 'killer' source with the answer (authoritative of course, otherwise they will dig deeper if necessary), whereas US lawyers tend to "fish" for everything on a subject and sit down and work their way through the material looking for all possibilities. It is the same with due diligence exercises: the US lawyers look around for everything, whereas E&W lawyers have in mind what they are looking for and investigate that. This is much more structured in approach but it may run the risk of being too narrow and missing relevant possibilities.

Why is this? Is it training? US lawyers are brought up from the cradle on two major databases – Lexis and Westlaw. These are authoritative and wide ranging. They are information sources and not filtered "knowledge" such as that which PLC produce in the UK. As pure information sources they need legal skills to be applied to the results to get to the answer. This of course is always the case to some extent, otherwise who would need lawyers? Specific client work will always need an application of legal expertise but moving from primary sources to the "answer" is a bigger jump than moving from commentary/know how that has done some of the work already. The former is more akin to an academic exercise, whereas the latter is more practitioner orientated. PLC go one further step beyond the textbooks that have been converted to an electronic version – the success of which has been much higher in the US than the UK – and any attempt by them to move into the US market will be very interesting. Lexis and Westlaw are both trying to launch "rivals" to PLC; maybe once those two giants of the US legal information world start marketing their versions to the US we will be able to see if the gap that PLC filled in the UK is similar in the US.

The UK has always, for various reasons, had a wider range of electronic sources for primary law – cases and legislation. Electronic versions of textbooks mentioned above have never worked particularly well in the UK (my own view is that a limited amount of research has been done in order to make these useable electronically – it is not just a matter of getting the text dumped on the internet.)

The UK legal databases are all better at some things than others and personal preference comes into play. The lawyers do not want (or do not have time) to search everything so they tend to pass over in-depth research to their information professionals – usually library teams or professional support lawyers. This results in the library teams in the US and the UK having a different focus.

Most in depth legal research in the UK is carried out by the information professional, both to keep costs down and to make sure that the searching expertise comes into play. With a plethora of databases, both for legal and business/financial research, lawyers cannot be expected to make the most of the sources and to use them effectively. The information professional's job is in the skilled use of these databases on a day-to-day

basis, and making sure the information they provide is from an authoritative source. With the growth of the internet we always have to have one eye on a lawyer doing their own research who finds information for "free" on the internet and assumes that this is all there is to it.

As the computer-literate generation becomes more prevalent and the use of the internet and email makes even the more reluctant lawyer capable of using a PC, it becomes more likely that lawyers will "pull" their own legislation and cases. The vendors deliberately target the end user in this regard and it is fairly easy now for lawyers to retrieve this type of information. If they want an answer to a particular point, however, or something that requires in depth research or a complicated search process, that will get pushed to the information professional.

US libraries will deal with long lists of case cites and they do some in depth research (especially if historical) but most attorneys will carry out their own research. The exception at the moment seems to be non-legal information (mostly business related). There is also a tendency to do the research and then get the library to double check it.

Is it billing? US lawyers will charge back all research time. The E&W lawyers, in part due to professional regulations, tend to feel more constrained in how much time they can charge for research. For them the shortest route to the right answer is the key.

Fear of litigation? US is generally more litigious, so they need to check absolutely everything to feel completely safe.

There are more public records openly available in the US – they expect everything to be there and be available – but that also means mountains more information.

With the more structured and filtered information databases being produced internally (ie know how and intranet sources) there are signs of US lawyers becoming a little more UK-like. It's a matter of trust and knowing that what they are looking at is resolutely on point and that some thought has gone on to make this documentation accessible.

There are also issues in both countries of lawyers simply not having the time to do their own research. Information professionals may fill that gap constantly or just on demand.

I wish to thank those who gave their time and advice regarding the content of this article – especially the librarians in the US offices of Sidley Austin who gave me their own opinions – Jeff Bosh, Christa Lange, Dave Rogers and Lisa Kiguchi Also to Ben Stacke for giving me his point of view as a lawyer.

The views expressed in this article are personal to the author and do not represent the views of Sidley Austin as a firm.

As well as the experience mentioned above, in particular at Sidley Austin (www.sidley.com), Susan Doe was Chair of the British and Irish Association of Law Librarians (BIALL – www.biall.org.uk) in 2004–2005. The Sidley Austin team recently won the inaugural Halsbury Award for Best Commercial Legal Information Service in London.

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The Network in 2008

By Nick Holmes

In 2008 Facebook et al will continue to prosper, but there is room on the web for anyone with particular expertise and as to what Web 2.0 can do for lawyers, we should be looking elsewhere.

In 2008 we'll see the incumbent law publishers experimenting with Web 2.0, attempting to engage users on their own platforms. We already have LexisNexis's Company Law Forum, and PLC talk of doing similar, but in a more controlled environment. We'll also see more Web 2.0 initiatives from "independents" such as CaseCheck and the prospective grand IP Law Wiki: these are the ones to watch.

And let's not forget the blogosphere. Because it is now old hat, blogging may be thought "so yesterday". But consider that you find more useful work-related conversations on a single law blog than you do on the whole of Facebook and that lawyers, their colleagues and associates and their potential clients network on blogs every day. Blogging is the most successful and relevant Web 2.0 network and that's not going to change anytime soon.

Getting to grips with HIPs

By Carolynn Peace

Berwins LLP (www.berwin.co.uk) is a 25 fee earner practice, 7 of whom are fully engaged in residential property in Harrogate and regionally. We have busy and successful private client, litigation, commercial and commercial property departments but residential property remains one of our biggest departments in terms of fee income, drawing new business into the practice. With this sort of profile we would have been very short-sighted indeed not to have seen the Home Information Pack as a serious threat to our market.

A long and winding road

The road to 1 August 2007 was a very long and winding one: we had been contemplating a Seller's Pack of some sort since 2000 after all. The uncertainty and delays in my view led to a lot of practitioners being unprepared. Before the government announcement on 22 November that HIPS would be mandatory for all properties from 14 December 2007, I was still talking to a local solicitor who thought the whole scheme was going to be scrapped (we supply his HIPs by the way).

We knew there was a possibility that the HIP would be dead in the water but knew that we had to be prepared and so … we talked to people. We talked to other solicitors, we talked to HIP providers, we talked to estate agents, we talked to a guy who had a product that I still didn't understand after three long meetings, we talked to the Law Society, we talked to our clients and we even talked to the lady in the sandwich shop across the road.

After all that talking we decided we needed a HIP solution that reflected our own brand; our modest little strap line is "no ordinary lawyers" which means that we provide a proactive client-focussed service combining a quality product with the best of technology. We have found that our clients are willing to pay for a quality service from a human being, not just a case handler but that they also want to check their case online with a glass of wine on a Sunday night, email their queries, and appreciate an SMS message confirming they can pick their keys up on completion day.

We looked at the Law Society HIP which is run by MDA Advantage. It was OK but we weren't blown away. And we wanted to be blown away because, having saddled ourselves with the soubriquet "no ordinary lawyers", we realised that we should be doing something extraordinary. We talked to a very impressive bunch of lawyers turned techies from the Midlands who had developed their own HIP, assembled online and with plenty of bells and whistles, and we went a long way towards adopting their product, but two things didn't feel right. Firstly, their product had been developed for online ordering by estate agents. We found the estate agents in our area had no interest whatsoever in involving themselves in the process of creating the Home Information Pack, however limited that involvement was; they wanted to sell houses and drive their Porsches and they wanted someone trustworthy to take the problem of HIPs away.

Secondly, the Government backtracked on yet another element of the HIP which meant that the mandatory elements now created so slender a bunch of documents that I heard Dennis Cameron from the Law Society referring to the HIP as the "Home Information Pamphlet".

HIP HIP Hooray!

And so somewhat tentatively we considered creating our own HIP. We knew we had the capability to do this and we had a few decisions to make which at the time seemed difficult but I now realise were blindingly obvious. Firstly, as regards the energy performance certificate, we offered a place on our panel of domestic energy assessors to anyone who could meet our criteria as regards service delivery, qualification, certification and so on. Serendipitously one applicant stood out from the crowd and in fact was the first DEA to be qualified in the region. This organization has offered us such a great service, effectively almost becoming a sales force for us, that I will need a lot of persuasion to add further to our panel, although as more DEA's qualify it may be that our colleagues in the estate agencies will be looking for some reciprocity of referrals.

Secondly, as regards searches, how we anguished over the personal search or official search debate. As a department, our policy is not to accept personal searches, however, and so really we knew the way to go on this. Harrogate Council made it easy for us by offering a desktop to desktop search facility (not just for us, I should add) and so this fell into place with our product.

Having official searches made the product more expensive than it could have been had we used personal searches but this "felt" the right decision for us, looking at our brand and our market. Surprisingly this is something estate agents did have a view on; they quickly latched on to the fact that a good HIP with official searches is going to speed the course of a transaction once agreed, and so we have stressed this element of our product in talks with estate agents.

Another important factor in this mix was assembly and delivery of the HIP. We had seen some really slick products in our research phase and we knew that the delivery of the HIP was going to be key in securing a share of this market. In 2006 we had invested heavily in a firm-wide case management system, Liberate from Linetime (www.linetime.co.uk). One of our conveyancing team exhibited a flair for computer programming and once we had assembled a couple of HIPs somewhat laboriously and prepared some templates and standard documents she was able to create us a bespoke HIP case management system which automates document assembly, launches relevant websites and autopopulates some fields for items that are ordered online, and has a diary function

Then our gift from heaven was Robert. Robert came along for an interview for a post as my assistant straight after completing the LPC. The sheer nonsense on his CV about emulating the guitar style of Mark Knopfler secured him an interview and then the complete enthusiasm he showed at his interview secured him a position. I gave him the Home Information Pack project for himself and he has fine-tuned and developed the product, shown a real aptitude for sales, turned many a HIP enquiry into a

good set of conveyancing fees (and from one well-handled call we got a HIP, a sale, a purchase, a Will and some commercial litigation too) and delivered the sort of service that we aspire to.

We have a forward-thinking IT strategy and so it was not necessary to invest in any new equipment just for this project but we have developed a separate website (hips.berwin.co.uk) so that clients, their estate agents, potential buyers and then actual buyers' solicitors will be able to view or print the relevant Home Information Pack through passworded access to the site. This is an alternative to our current practice of emailing pdf files and sending out printed packs.

Where we are now

The Home Information Pack has been good for us so far. It has been a profitable source of work and it has strengthened our relationship with independent local estate agents. It has been a delight to keep the work in this area, working with local agents, a local DEA and our local authority in this day of call-centre commoditisation. While our product is not bargain basement cheap, it is still cost effective because there are no middlemen skimming management charges off the top.

Whether we will make many HIPS for 1- and 2-bedroom houses is another question, however; this is the more price-sensitive end of the market and we need payment up front to make our product work. We have searched for a deferred payment solution without success as we are just not putting through enough numbers to meet the criteria of the providers of this type of consumer credit. However, this was never really our market and while I will continue to look for a deferred payment arrangement to benefit our clients we can't be all things to all people.

I would strongly urge other solicitors to create their own HIPs; whether you put resources into it and make it a profitable endeavor or see it as a loss leader, our experience is that it will bring benefits to your clients and your practice.

Carolynn Peace is a partner in Berwins LLP (www.berwin.co.uk) and head of residential property. Her interests apart from residential property are travel (sometimes pillion on a Harley Davidson) and theatre, sitting on the Board of Trustees of Harrogate Theatre.

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Law 2.0 in action

By Stephen Moore

CaseCheck (www.casecheck.co.uk) is a free, fully searchable, online archive of continually updated Scottish Court and EAT Case summaries. Built upon an open source blogging platform the content for the site is user generated and archive is composed of a back catalogue of previously issued email newsletters. However, the site is also designed to be a platform to give lawyers, barristers and experts a stage on which to demonstrate their expertise by summarising and commenting on developments and court decisions that the legal community needs to keep up to date with.

A few years ago CaseCheck would not have been possible. Financially the commitment would have been considerable – too considerable for a fledgling business determined to self fund – but the proliferation of open source content management systems has rendered this venture 100 per cent possible. As a development platform we have customised the Dot Net Nuke framework (www.dotnetnuke.com) which is a free open source framework for creating many types of commercial, publishing and intranet applications.

The archive content

As a trainee solicitor I established Intersettle.co.uk, Scotland's online negotiation platform. This involved obtaining the strategic involvement of seven of Scotland's leading litigation practices. Online negotiation as a concept in the UK did not really take off and I think that the main reason for this is that it asked lawyers to manage the negotiation process differently. Instead of dictating a letter of negotiation, the lawyer was required to start up a browser, open a website and initiate the process. As I was struggling to get lawyers and claims handlers to put cases through the system I began, as a marketing exercise, to summarise Scottish Court Decisions and to send out an email containing these summaries, free of charge, to solicitors. My reasoning was that if 10 lawyers in a law firm were spending an hour each per week trawling websites to find out what was relevant to them then that was a lot of time wasted. The *Intersettle Scottish Court Newsletter* did this work for them and the circulation grew until such time as I began charging for

it to help pay my way through a Masters degree in IT. (I did not want to do this, but, as they say, "needs must"). Once I stopped practising as a solicitor I became aware of my increasing limitations from a summarising perspective and others, keen to gain a profile, became involved in the summary writing process. The CaseCheck case summary archive uses a lot of the content included in the *Intersettle Scottish Court Newsletter*.

User generated content

I am not naïve enough about the law and lawyers to think that suddenly, just because the platform was there, potential contributors to the site would come banging at my door.

The CaseCheck case summary providers all have an interest in keeping up to date with the law and an interest in enhancing their own profile and some of them wrote summaries for the *Intersettle Newsletter* in its latter stages. The Case Summaries section is just the first phase and the summary providers are using their involvement to market themselves to clients, potential clients and others. They feel it is one of the best ways to actually, truly demonstrate skill in their field. Euan Dow, the advocate, believes that as a result of the time he has spent writing summaries his ability to interpret, determine and discern a good judgment from a poor one has dramatically increased.

Increasingly, I am being contacted by solicitors keen to add their commentary to a case. Recently one of Scotland's most highly regarded civil QCs took the time to add his comments.

CaseCheck objectives

The objectives behind CaseCheck are numerous, but here a few of the more significant ones:

- To make effective use of work previously completed under the guise of the *Intersettle Scottish Courts Newsletter*. The newsletter was a flat html bulletin updating recipients with summaries of recent court decisions.
- To implement a solution that knocks the pants off expensive, cumbersome, proprietary case law databases.
- To develop a flexible, efficient system which demonstrates that the amount of benefit enjoyed from technology is not directly related to cost. All one needs is imagination and conviction.
- To develop an application that allows its users to contribute to a resource in order to create something rich in terms of learning.

I launched the site, with some trepidation, at the beginning of October. During my working life I have often been ahead of the pack in terms of technology and the law and I have to say that this is not always a good idea! However, I am glad to report that the feedback has been 100 per cent positive, with many of the comments relating to ease of use.

In Scotland there are just under 10,000 solicitors. In its first month CaseCheck, from a standing start of 0, was visited over 3,000 times by over 2,000 unique visitors and the bulletin list itself grew to over 2,000 email addresses. In its second month CaseCheck is due to double its first month's traffic statistics, which is pleasing. What is equally pleasing is that the visitors are spending, on average, 3.5 minutes on the site.

Functionality

In terms of functionality and content the site now:

- Links all case reports to their associated legislation
- Contains a directory of legislation. This is not exhaustive, but it is being continually updated.
- Has a facility whereby articles on a variety of different subjects can be added to the site.

Using CaseCheck means that lawyers have to do less rather than more to keep pace with developments; they don't even have to wonder if they can afford it. What they should also find is that CaseCheck has been developed upon core principles of ease of use, flexibility and simplicity.

Business plan

My plan is that CaseCheck will remain free at the point of use. As I mentioned earlier, using an open source content management tool has meant that the cost involved in delivering such a rich application is not budget breaking. As the community builds up I will introduce some advertising.

In addition, I see CaseCheck as the perfect marketing platform for my own legal technology consultancy. Recently I was speaking to a commercial law firm's chairman about CaseCheck and about my consultancy work in general. He explained to me that technology consultants often reminded him of the couplet "Too many protest singers, not enough protest songs," in the Edwyn Collin's track 'Never Met a Girl Like You Before'. His point was that CaseCheck, like Intersettle and a couple of other litigation technology projects, further enhanced my back catalogue of "protest songs".

Conclusion

In summary, what I am looking to do is create a resource for lawyers, paralegals, law students and anyone interested in the law and the business of law. This resource is based not around the "read what I write" model but around the "read what we all think and hopefully learn something" model. CaseCheck is designed to be platform on which those with something to say can stand up and be counted. Recently QCs, solicitor advocates, solicitors and students have added their own comments to case reports.

CaseCheck is a way to engage with various elements of the legal community, building bridges between employers and potential employees, advisers and potential clients and, hopefully, between experience and youth.

Stephen Moore is a qualified lawyer who also holds a masters degree in IT. As well as setting up CaseCheck (www.casecheck.co.uk), he runs Moore Legal Technology (www.moorelegaltechnology.co.uk) which provides lawyers with legal technology and consulting services. As a trainee solicitor Stephen established Intersettle (www.intersettle.co.uk).

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Wishing on a wiki

By Robert Dow

At PLC we like to be at the cutting edge of technology in the law, sometimes a difficult place to be. However, social software (blogs, wikis and the like) seemed one of our easier challenges.

We already work collaboratively with our users. Our materials are often co-authored with lawyers in practice, we participate in industry groups and we have lots of dialogue with our users. In short, we think of ourselves as being at the fulcrum of practice, as a professional support lawyer to the profession. At its heart social software is about user participation, so it seemed a natural fit. Not only that, but social software is cheap to buy and easy to implement; no need for the years of investment we have put into document automation.

Of course, with such an encouraging set of circumstances, our first attempt at an external wiki wasn't an unqualified success. The wiki was in the commercial property area (wiki.practicallaw.com). We already host and maintain the industry standard Commercial Property Standard Enquiries, which requires taking comments from those across the industry. So when the Code for Leasing Business Premises in England and Wales 2007 was introduced, launching a wiki that was free to everyone to take feedback and discussion seemed an excellent idea.

As we expected, we received lots of comment, and feedback on a code compliant lease that we had drafted, but it was all by email or telephone. Despite cajoling, most lawyers were not comfortable committing themselves to a comment online – even those who were more than willing to ask questions or give answers in face to face seminars.

We allowed them to participate on an anonymous basis, but that just attracted spam. The wiki remained stubbornly barren of content, apart from a businessperson who left a confused and slightly helpless question about a lease problem he or she was suffering, and was answered, helpfully and civilly, by an anonymous lawyer.

The issues we faced are likely to be faced by anyone trying to take advantage of the promises of social software. Whilst it is seductively cheap and simple to implement, the golden rule is the same as that which applies to any technology project: it isn't about the technology, it's about the users. The good thing is that with social software you won't have spent a million pounds to find out that this rule doesn't change.

Suitably chastened, our next social software projects will be more cautious. Both will use restricted groups to build up user confidence.

The first will be an annotation facility, allowing subscribers to annotate our materials. The annotations will only be visible to other members of the annotators' organisation. Thus a professional support lawyer in a firm can make a comment on one of our notes, or link to more detailed expertise that the organisation has.

The second will be a pilot in relation to the new Companies Act. A large number of organisations rely on the materials we are publishing on this important change in the law, and we already partly act as a clearing house for opinions on it. Most of this interchange happens by email, telephone or face to face; we receive around 12 emails a day on the topic. Many opinions or debates that would be very valuable to other practitioners are currently sitting in the email threads of our editors' in-boxes.

Early next year we will try to move this debate online. The aim will be to create a forum in which lawyers will be able to ask questions of or to debate the difficult issues raised by the Act with like-minded counterparts. Initially, membership of the forum will be by invitation only, and will be limited to a small group of interested legal professionals. The quid pro quo of joining will be contributing to the discussion.

By doing this we don't want to hide knowledge from the profession; in fact we want to move it out of email inboxes so that it is more visible. Nor do we want to create an elite inner circle; we will try to make sure that the discussion reflects views from different parts of the profession. But in order to encourage people to voice their opinions we think that it is best to start with a small and personal club so people become comfortable engaging in the type of dialogue they currently use emails for.

We hope this more cautious approach will succeed. However, the ultimate question is whether lawyers are genuinely willing to share knowledge; if not, social software in the law will remain more wish than reality.

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Virtually unrecognisable?

By Mark Harrison

The way things were

I can remember my old legal life as if it was yesterday. Groaning filing cabinets stuffed full of cardboard files, a roomful of secretaries devoted to typing letters and filing correspondence, various miscellaneous admin staff, and a firm made up of lawyers who were obliged to be physically present in the office from 9–5, Monday to Friday, at the very least.

Look a bit more closely and you would see some of the attendant lifestyle problems I used to find with this way of working. No flexibility in when or where you worked; competent use of IT but no plan to drive its use to power all aspects of the firm and its mode of operation. My old firm. Any old firm, now I come to think of it. Speaking as someone with an interest in IT, I used to find the whole set-up intensely frustrating.

The present

Fast forward through two years of intensive work and business-building, and you'll now find me leading a very different lifestyle and running my own "virtual" firm, e-Litigate (www.e-litigate.com). The way I work is unconventional, and it would not be right for everyone, but I love it and have never looked back. The Law Society of Scotland has been very supportive of the business concept, and initial meetings with them clarified that there were no issues regarding the way I proposed to work that would cause them concern.

I now work between a home office and shared office space. The latter is rented from another solicitors firm. All of my business mail is sent to the office, where it is scanned and emailed to me on receipt. This works very well and gives almost complete freedom to work from any remote location. I spent a great deal of time researching how best to deal with phone calls given that I don't employ any secretarial or reception staff. The answer was a VOIP system and I chose to use Vonage (www.vonage.co.uk) as my provider. The service offers great flexibility with voicemail files emailed to you and easy diverts to the mobile. Similarly, faxes arrive as email attachments via a service I sourced from eFax (www.efax.co.uk). Of course, like any modern lawyer, my Blackberry is seldom far away, although I am finding the restricted webmail limit and lack of complete integration with Outlook an increasing hindrance. I'm thinking of a smartphone running Windows Mobile software as a replacement. Through all of this, my aim has been to provide a thoroughly responsive service, so that my clients are confident that I am always at the end of the phone, or just an email away, when they need me.

When I started up e-Litigate, I pared down the concept of a law firm to the bare essentials, and then rebuilt it from scratch. I felt that technology could be used to much greater effect than most firms realised. I longed for some flexibility in how, where and when I worked, and I wanted an incentive to do well.

I felt that a lot of the overheads associated with a traditional practice were unnecessary. I didn't want my clients to have to pay extra for my services merely for me to enjoy the trimmings of a fancy office, or to have a secretary to do my typing or make my coffee. The type of clients I usually work for – and the type I was hoping to attract – are savvy, IT-literate business people, who are looking for a legal service that is good value for money. I decided that working from home, with a shared office base for mailing and meetings was the core requirement. So now my Nuance Dragon NaturallySpeaking voice-recognition software does the typing (www.nuance.com) and I've indulged myself in a superb expresso machine! (*See also the article by Bruce de Wert of Caithness firm Georgesons on voice recognition in the September/October 2007 issue of the Newsletter.*)

From the start, my interest in green issues has dictated that my new firm would be "paperless" or at least as close to it as is possible. As a new start-up, it has been easier to develop this from scratch. There are real practical benefits to holding the client's file electronically, as it means that I can always access the full file on any matter when I'm away from the "office".

Obviously, given my reliance on so much digitised data, I have found it critical to have robust backups in place. I invested in a commercial remote backup service called Depositit (www.depositit.com) and this has worked very well. Crucially, this provides secure off-site storage.

With experience, I've refined my original business model in a couple of ways. In particular, I had a server installed about a year ago to facilitate remote working. This was commissioned by a local IT company (www.icelantic.com) and is maintained by them with my own occasional intervention. This enables me to log into the system from any computer via secure VPN link, and means I can work from anywhere with a broadband connection. The other significant development was my snail mail scanning service. This is provided under the agreement I have with the firm I rent my office space from. Following its introduction, I don't have to worry if I'm out of town for any reason; I can always pick up the mail. I found that, although I can do without much of the support available in a traditional firm, help with the physical mail was essential, as I am often out and about on business. In this respect, I've moved away from the original concept of being completely unsupported but at nominal cost and to real advantage.

I've been helped tremendously in setting up the firm by a band of loyal clients, who have stuck with me and whom I hope have been well served by the new efficiencies the firm has brought. From a marketing perspective, the firm's website is pivotal to our external presence in the marketplace, and whilst I have spent time with linking and other SEO there is always more that can be done.

The things to come

I have plans to expand the firm in the near future, to take on others who would like to work in the same way. Watch this space!

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