

## Policy foundations of AustLII: One approach to free access to law



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## 20 years ago – The context of free access to law



- **General environment**
  - Privatisation/commercialisation of government assets/services
  - Mosaic graphical browser (93): large-scale web uptake
- **Legal informatics**
  - No free access to legal information anywhere
    - ✦ No government legal systems were free
    - ✦ NZ sold the only digital copy of its statutes
  - 1<sup>st</sup> generation online commercial legal retrieval systems
    - ✦ In Australia, up to \$720/hour online and almost no users
    - ✦ Brief success of law on CD-ROMs
  - ‘Expert systems’ boom did not go anywhere much

## What would you have predicted?

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- There was *no guarantee* that the web would deliver legal information for *free* access
- There were many interests (government and commercial) *opposed* to anything being free
- A few developments *anticipated* free content
  - Open source software: Apache, Perl etc
  - Mosaic, Netscape were free but not open source

*But some local factors were supportive ...*

## Favourable context of AustLII's origins

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- **'DataLex Project' - 10 years experience in LIS**
  - Software (Mowbray) for legal expert systems, plus production experience in large-scale hypertexts and databases
  - Frustration in not being able to obtain Australian cases and legislation for teaching or research
- **'First mover advantage'**
  - Both government and commercial legal publishers were completely unprepared for the web
- **ARC provided 'research infrastructure' grants (unusual)**
  - 1995: We obtained a \$100,000 academic grant to build AustLII
  - Enough for hardware and 12 months staff, as intended
- **Law schools (UNSW & UTS) with sympathetic values**
  - Recognised as achievements (i) LIS research; (ii) community service; (ii) 'social justice' contributions and (iii) novel forms of publication

## 10 Key policies in the development of AustLII

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1. *Insist on the right to republish (above all else)*
2. *Reject differentiation of 'value adding'*
3. *Automation is the only option*
4. *Collaborate with data sources*
5. *Take an expansive view of content*
6. *Serve all audiences, avoid surveillance*
7. *Use independence to gain sustainability*
8. *Be a publisher, not a repository*
9. *Put the platform first*
10. *Help other LIIs and cooperate with them*

### 1 *Insistence on the right to republish*

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- Core policy of free access : the **right to republish** any 'public legal information'
  - Legislation, cases, treaties & law reform
  - Stressed by AustLII from 1995 onward (over)
- 'Right to republish' was AustLII's political demand
  - Argued with governments for 5 years to free the law
  - The Commonwealth, and all States and Territories resisted this demand in various ways, often for years
    - ✦ Exception: NSW, HCA, followed by all Federal courts
  - 'Right to republish' was by 2000 accepted by all major official legal sources in all Australian jurisdictions

## AustLII's 'obligations of official sources' (1995)

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- AustLII (1995) advocated 6 obligations of official legal data sources, as necessary for 'full free access':
  1. Provision in a **completed** form, including additional information best provided at source (eg consolidation)
  2. Provision in an **authoritative** form, including citations
  3. Provision in the form best **facilitating dissemination**
  4. Provision to any 3rd-P republisher on a **marginal-cost**-basis
  5. Provision with **no re-use restrictions** or licence fees
  6. **Preservation** of a copy by the public authority
- **Main point:** Official self-publication is useful (adds choice), *not* essential. **Right of republication is essential.**

*'Free access' to law is closer to 'free speech' than 'free beer'*

## The right to republish, internationally

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Overseas, we **observe and utilise local law**. Also observe **robot exclusion protocol**. Most countries exempt legal sources from copyright, and official sites allow robots.

Example: Japanese *Copyright Law A13* Exempts constitution, laws and regulations; notifications etc; translations and compilations thereof by state, local or independent administrative organs. **Result** is that we can include official translations of Japanese law in the databases on AsianLII



Home | Databases | WorldLII | Search | Feedback | Help

**Supreme Court of Japan**

AsianLII

You are here: [AsianLII](#) >> [Databases](#) >> Supreme Court of Japan

[Database Search](#) | [Name Search](#) | [Recent Decisions](#) | [Help](#)

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**Supreme Court of Japan**

Database last updated: 7 November 2011  
 Most recent decision: 28 April 2011  
 Number of decisions: 1105

Decisions beginning with ...

[A](#) [B](#) [C](#) [D](#) [E](#) [F](#) [G](#) [H](#) [I](#) [J](#) [K](#) [L](#) [M](#) [N](#) [O](#) [P](#) [Q](#) [R](#) [S](#) [T](#) [U](#) [V](#) [W](#) [X](#) [Y](#) [Z](#)

Decisions for the years ...

[1950](#) [1952](#) [1953](#) [1955](#) [1957](#) [1958](#) [1959](#) [1960](#) [1961](#) [1962](#) [1963](#)  
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[2011](#)

This database contains decisions of the Supreme Court of Japan and is based on data obtained from the [court website](#).

## 2 *Reject 'value adding' differentiation*

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*AustLII rejected any distinction between 'basic' and 'value-added' versions of legal sources*

1. Today's value adding is tomorrow's commonplace
  - It is a meaningless distinction
2. It would be an excuse for public bodies to withhold the best versions of public legal information
  - Attempts to only give AustLII PDFs (not RTFs) or 'old' data have been resisted and overcome
3. It could create a conflict of interests within AustLII between what would be free and 'AustLII+'

*You can't be a little bit free*

## 3. *Automation is the only option*

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- **No significant editorial intervention is possible**
  - Human intervention must be programmatic, not editorial
  - 'Free access' imposes strict financial disciplines
- **All AustLII resource creation is largely automated**
  - Example: automatic conversion of case-law email streams into marked-up databases with hypertext links
  - The LawCite Citator is completely automated
  - Neutral citations (adopted by CCJ 1998) have been crucial to automation – the 'Australian system' now adopted elsewhere
  - Extracting metadata from scanning is a rare exception
- **Automation creates sustainability, nothing else does**
  - Some forms of crowd-sourcing might do so in future

## 4 Collaborate with data sources

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*AustLII must accept all data available & deal with it*

- AustLII sought and developed (often over 15 years or more) close policy and technical collaboration with all its data sources
  - Over 200 Courts & Tribunals email decisions to AustLII in (relatively) consistent formats
  - 10 legislative offices consult on structured data formats, but only moderate consistency
  - BUT insisting on the right to republish comes first
- This cooperation makes automation possible

## 5 Take an expansive view of content

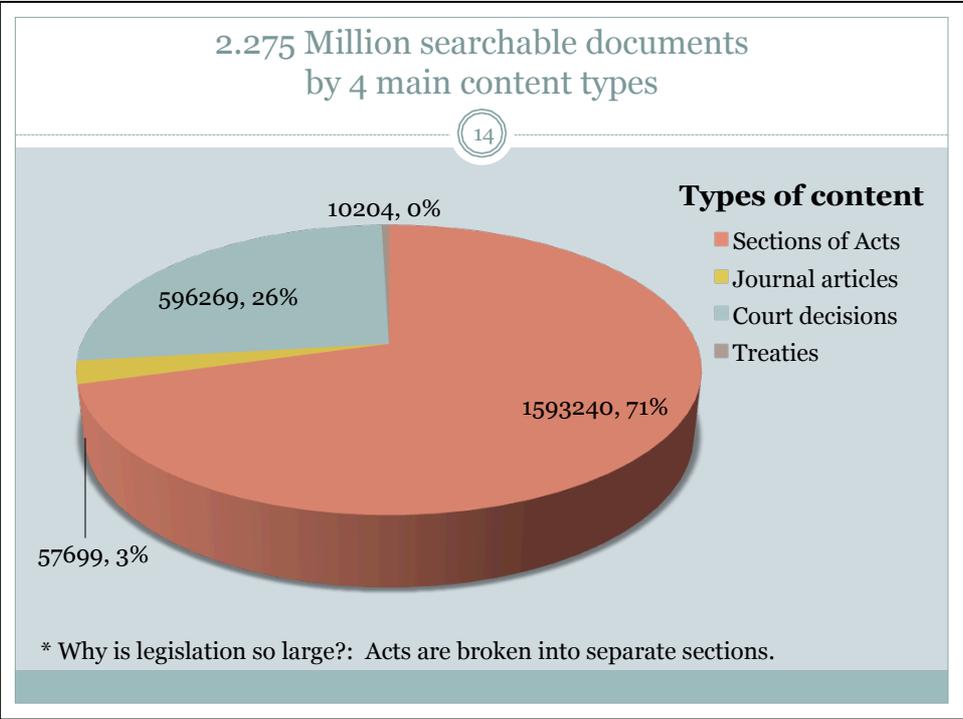
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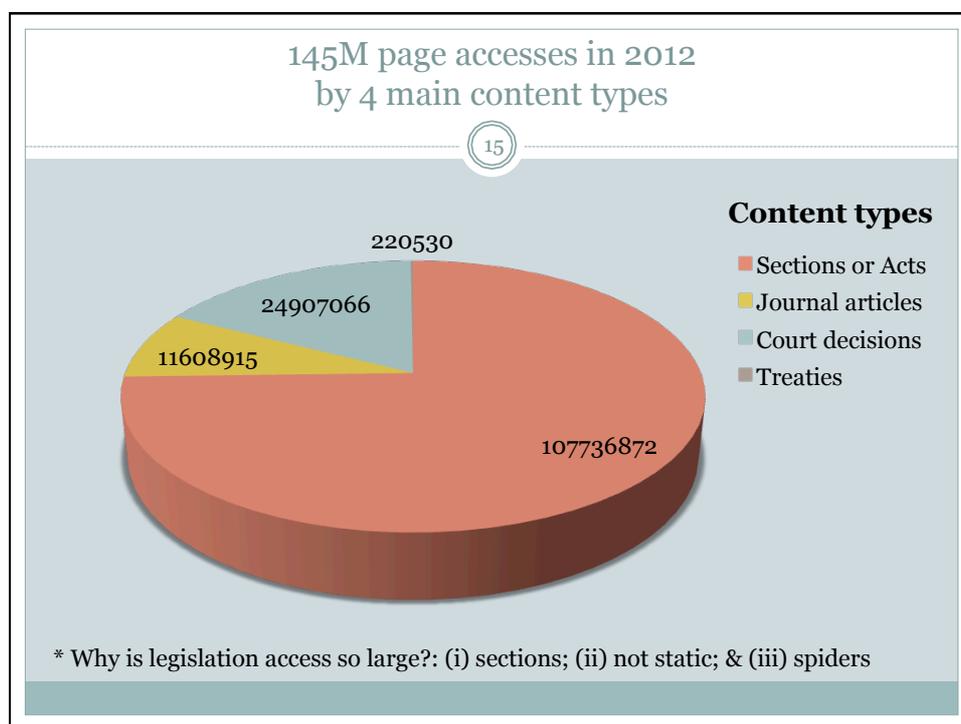
- Attempt to include all forms of ‘public legal information’
  - ‘Five pillars of free access content’ emerged ( legislation, case law, treaties, law reform reports & (non-commercial) legal scholarship)
- *Interconnecting* these different legal sources in every way possible was always a main goal
  - All documents (except Acts) have consistent citations imposed by AustLII – this has made interconnections possible
- AustLII’s aim is now *comprehensive* coverage of Australasian law, both horizontally & vertically
  - New audiences and new sources of financial support have resulted
- ‘Horizontal’ comprehensiveness – close but not quite
  - Most courts and tribunals, no matter how small
  - Complete delegated legislation is still only a goal
  - Complete non-commercial scholarship is a current project

## ‘Vertical’ comprehensiveness: ‘Colonial Legal History Library’

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<p><b>New South Wales</b></p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> <a href="#">New South Wales Acts As Made 1824-1900</a> (AustLII)</li> <li><input checked="" type="checkbox"/> <a href="#">Superior Courts of New South Wales 1788-1899</a> (AustLII)</li> <li><input type="checkbox"/> New South Wales Law Reports 1880-1900 (being processed)</li> </ul> <p><b>Queensland</b></p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> <a href="#">Superior Courts of New South Wales - Moreton Bay 1851-1859</a> (AustLII)</li> <li><input checked="" type="checkbox"/> <a href="#">Queensland Historical Acts 1860-1896</a> (AustLII)</li> </ul> <p><b>South Australia</b></p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> <a href="#">South Australian Numbered Acts 1837-1900</a> (AustLII)</li> <li><input type="checkbox"/> South Australian Law Reports 1865-1900 (being digitised)</li> <li><input checked="" type="checkbox"/> <a href="#">Superior Courts of South Australia 1837-1864</a> (AustLII)</li> </ul> <p><b>Tasmania</b></p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> <a href="#">Tasmanian Numbered Acts 1826-1900</a> (AustLII)</li> <li><input checked="" type="checkbox"/> <a href="#">Superior Courts of Tasmania 1824-1843</a> (AustLII)</li> </ul>	<ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> <a href="#">Tasmanian Law Reports 1897-1900</a> (AustLII)</li> </ul> <p><b>Victoria</b></p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> <a href="#">Victorian Historical Acts 1851-1900</a> (AustLII)</li> <li><input checked="" type="checkbox"/> <a href="#">Victorian Law Reports 1874-1900</a> (AustLII)</li> <li><input checked="" type="checkbox"/> <a href="#">Victorian Government Gazettes 1851-1900</a> (AustLII)</li> </ul> <p><b>Western Australia</b></p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> <a href="#">Western Australian Numbered Acts 1832-1900</a> (AustLII)</li> <li><input checked="" type="checkbox"/> <a href="#">Superior Courts of Western Australia 1833-1898</a> (AustLII)</li> <li><input type="checkbox"/> Western Australian Law Reports 1899-1900 (being digitised)</li> </ul> <p><b>New Zealand</b></p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> <a href="#">New Zealand Acts As Enacted 1841-1907</a> (NZLII)</li> <li><input checked="" type="checkbox"/> <a href="#">New Zealand Lost Cases Project 1841-1869</a> (NZLII)</li> </ul> <p><b>Law Journals and Legal Scholarship</b></p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> <a href="#">Law Journals and Legal Scholarship Concerning the Colonial Period</a></li> </ul>
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6 *Serve all audiences, avoid surveillance*

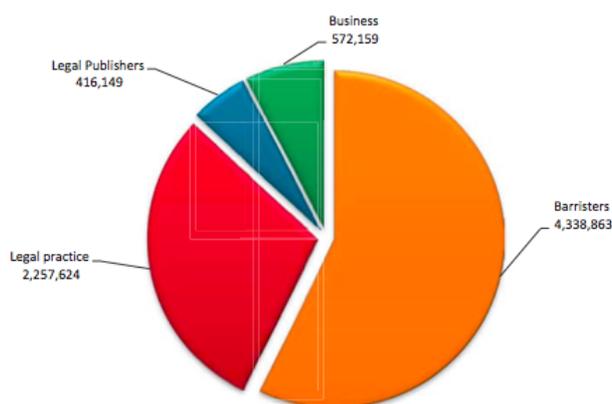
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- **‘Free’ includes ‘free from surveillance’**
  - No logins; most IP addresses are anonymous; no analytics
- **Aim to serve *all audiences* for legal information**
  - Eg decisions of many small tribunals
  - Approx. 10% (est.) of access is from the general community
  - Of identified users, 45% commercial sector, 27% education, 27% government, and 1% community. But most are not identifiable.
- **Commercial appeal (including to the legal profession) is important but secondary**
- **Some audiences come to AustLII via linkages from commercial publishers’ systems**
  - These publishers then become funding sources
- **Specialist ‘Libraries’ for special audiences**
  - Eg Aviation; Taxation; Health Practice; Indigenous law

Commercial sector = 45% of *identifiable* users

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Number of requests from the top 50 identifiable commercial users in 2011

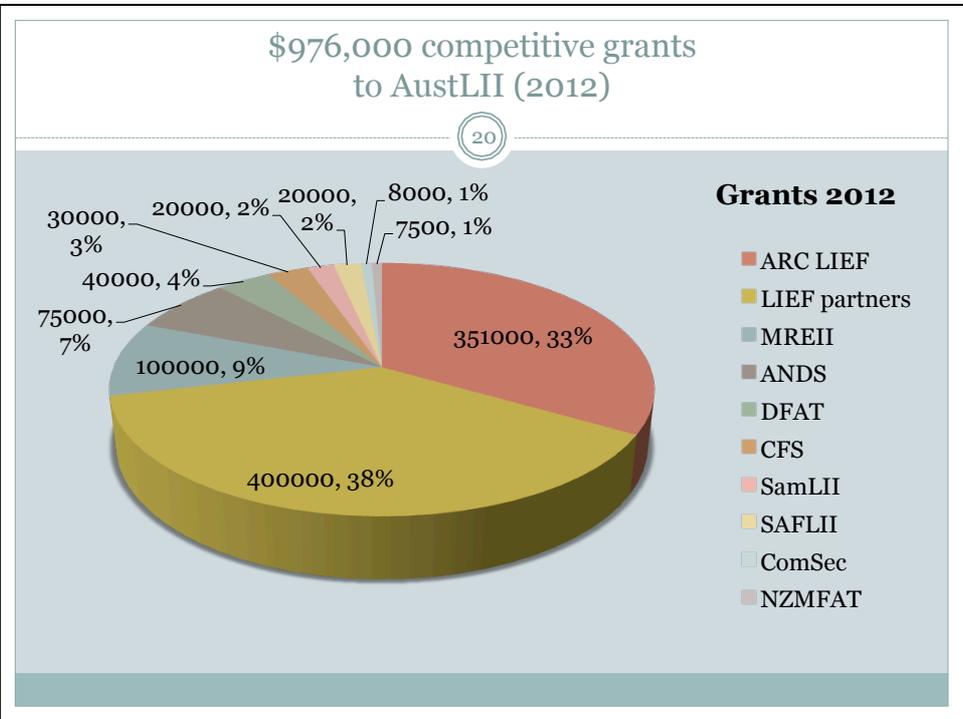
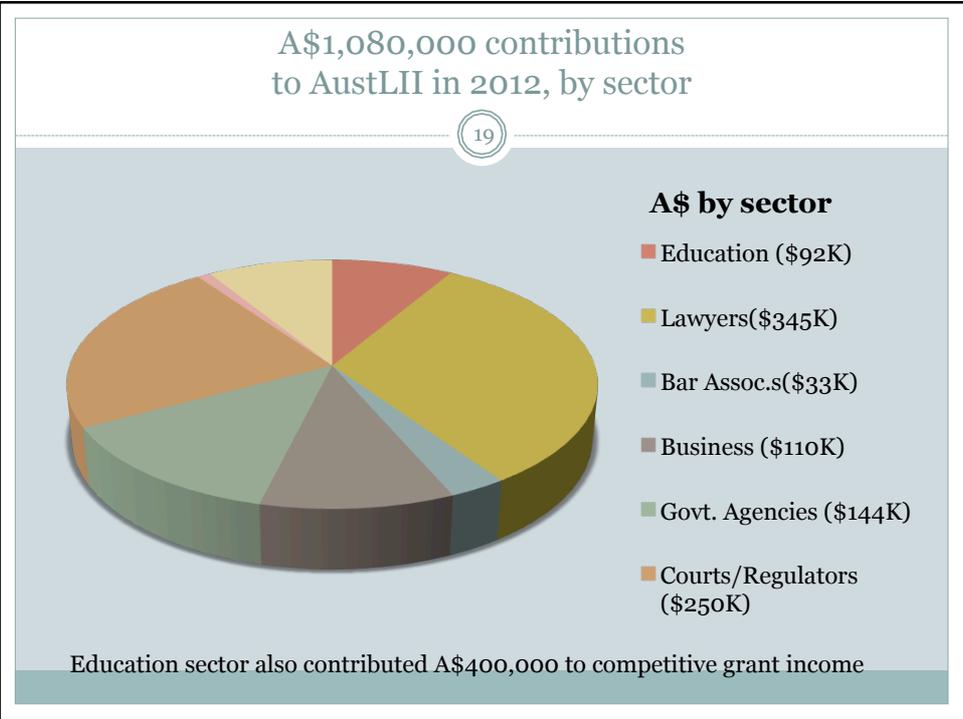


7 M accesses in 2011 from *identifiable* commercial users (ignoring ISPs)

## 7 Use independence to gain sustainability

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- **Sustainability requires:**
  - Host institution support (against external/internal pressure)
  - Obligations on data sources to provide data
  - Financial independence
- **A 'multi-stakeholder' approach to funding**
  - Reliance on one or few funding sources risks independence
- **Contribution funding ensures sustainability**
  - AustLII Foundation Ltd now has over 300 regular contributors
  - In 2012 \$1,080K contributions
- **Grant funding enables innovations**
  - AustLII Research Centre obtains academic grants
  - In 2012, \$976K grant funding



## 8 Be a publisher, not a repository

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- **AustLII protects its assets, so as to protect the sustainability of free access**
- **It limits search engines spidering & searching**
  - Google etc cannot search any AustLII case law (privacy policy of all Australian Courts and AustLII)
  - Also protects AustLII asset – aggregated non-dynamic data
- **AustLII prevents republication of data it aggregates – it is not a repository**
  - Others must go and collect it themselves from data sources
- **‘Free access’ is not the same as ‘open content’**
  - Repositories must have different business models

## 9 Put the platform first

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- **AustLII is a production system**
  - Needs of real users and data sources (reliance) must get priority
- **Research is essential, but individual research projects are not primarily important for their own sake**
  - Projects have to be capable of immediate large scale deployment
  - Little capacity to do experimental ‘pure’ research for its own sake
  - Different from most academic researchers
- **Research projects are important for the contribution they make to the long-term development of AustLII**
  - or another LII such as WorldLII, AsianLII etc
- **AustLII is an applied research Centre**
  - AustLII’s research is almost all applied research
  - Its purpose is to improve the systems we operate
  - ‘research to improve research infrastructure’

## 10 Help other LIIs and collaborate with them

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L to R: Prof Andrew Mowbray (UTS), Paula Rainha (SAFLII), The Hon. Justice Edwin Cameron (Constitutional Court of South Africa), Philip Chung (Executive Director, AustLII) and Mildred Shabangu (Constitutional Court Trust)

## Why help other LIIs and collaborate with them?

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- **Would ‘free law in one country’ be useful?**
  - Australian law always part of the common law
  - Law and legal research has been ‘globalised’ beyond the common law – most areas now involve international or comparative law elements
  - If only Australian law is free, it is only half-useful
- **Global free access to law involves international *reciprocity***
  - Australia makes its law free access as part of a global bargain
  - So it is vital to give technical and other assistance to other LIIs

The Free Access to Law Movement now has 48 members from all continents




20 LIIs at the 'Law via Internet' annual meeting and Conference, Hong Kong 2011

## AustLII international projects since 2000

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Name	Scope	From
BAILII	UK & Ireland	2000
PacLII	Pacific Islands – 17 countries	2001
HKLII	Hong Kong	2002
WorldLII	Global portal – 13 LIIs involved	2002
NZLII	New Zealand	2005
CommonLII	Commonwealth – 54 country portal	2005
SAFLII	S & E Africa (10 countries)	2006
AsianLII	Asia – 28 country portal	2007
LII of India	India – 36 jurisdictions	2010
LiberLII	Liberia	2011
SamLII	Samoa	2012

## AustLII collaborates with twelve other LIIs to provide the portals AsianLII, CommonLII and WorldLII

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Systems	AsianLII	CommonLII	WorldLII	Countries	
AsianLII	166	0	166	23	*
AustLII	0	460	460	1	
BAILII	0	86	86	4	
CommonLII	36	66	66	22	*
CyLaw	0	6	6	1	
Droit.org	0	0	1	1	
GLIN	4	0	49	34	
HKLII	32	32	32	1	
LawPhil	16	0	16	1	
LII Cornell	0	0	3	1	
LiberLII	0	0	8	1	*
NZLII	0	74	74	1	*
LII of India	154	154	154	1	*
PacLII	25	251	251	19	
SAFLII	0	120	120	15	
SamLII	0	20	20	1	*
ULII	0	16	16	1	
WorldLII	0	0	107	55	*
<b>2012 Total</b>	<b>433</b>	<b>1279</b>	<b>1635</b>	<b>183</b>	<b>595</b>
<i>2011 Total</i>	<i>430</i>	<i>1204</i>	<i>1552</i>	<i>182</i>	<i>555</i>
<i>2010 Total</i>	<i>300</i>	<i>905</i>	<i>1205</i>	<i>164</i>	<i>408</i>

## Conclusions?

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- **‘Business models’ for free/open content are usually complex – AustLII is not unusual**
  - Those interested in commons / public domain need to study examples of sustainability
  - Contrast ‘free’ losses before an initial public offering (IPO)
- **AustLII is not a template, just an example**
  - Its circumstances are unlikely to be replicated
  - Only some elements of its experience are likely to be useful
- **Sustainability is a constant balancing of many factors**
  - But the 10 principles discussed have been relatively constant
  - By themselves they guarantee nothing: circumstances change
  - Current situation: No room for complacency, but no crisis

## For another day – AustLII's technology policies

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1. Large scale automated hypertext
2. A search engine that scales up
3. Reliance on file systems, static addresses and open source software
4. An automated, international, citator
5. Replication & backup of other collaborating LIIs
6. Simultaneous searching and ranking of texts in multiple languages
7. Point-in-time legislation
8. Subject-specific libraries
9. Techniques for mass digitisation of legal texts