

Openness to Third-Party Additions: Essential to Meaningful Public Access*

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Abstract

Standing alone, collections of judicial opinions (judgments), legislation (acts), and regulations (statutory instruments) are, by their nature, seriously incomplete. No matter how accurate, comprehensive, up-to-date, and free to the public, compilations of primary law materials are, at best, a foundation layer – essential to but far from sufficient for meaningful public access to the law directly affecting the daily lives and activities of individuals and families. By design the bodies that issue authoritative law materials – courts, legislatures or parliaments, and government departments or ministries – operate with significant autonomy and through discrete actions and documents. Successful commercial legal publishers and their online descendants have long done more than gather and organize such official output. Effective public understanding and accountability require editorial additions that integrate, evaluate, and interpret. For this reason, opening “free access” sites to third-parties who would add value in these ways is essential to success in achieving their underlying aims.

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The dominant approach of the commercial legal information providers is to create or acquire editorial material that integrates and interprets primary law documents and place it behind a proprietary wall, bounded by copyright and costly subscription agreements. Limited mandate and scarce resources prevent government free access sites from taking this approach. Few NGOs undertaking public access to law activities have the human or financial resources to go much beyond programmatic measures of integration – e.g., cross referencing, dating, and annotating. Because of these limits and others, steps by “free access” sites that facilitate efforts by scholars, legal professionals, organizations focused on particular social or legal issues, public agencies themselves, and even commercial legal information entities that add value to basic law collections can have enormous leverage.

The paper reviews basic forms of adding value to primary law collections, including: (1) integration across document types and legal bodies, (2) the logging of time and subsequent developments through annotation, (3) interpretation of discrete actions, language, or documents in the light of others. It then explores how features of free access sites can facilitate, support, or, through their absence, frustrate efforts by others to build on their materials: e.g., openness to external linking, enduring document addresses that can be derived from standard citation information, version identification, non-discriminatory and hospitable licensing terms.

1 Introduction

There are at least four places one might begin:

- with the public and diverse settings in which one can readily envision individuals benefiting from improved access to law
- with law as it is made, organized, and disseminated in the pertinent jurisdiction
- with those intermediaries to whom members of the public must presently turn for legal information, interpretation, and guidance – lawyers, public officials, and others, and lastly
- with those information sources that serve as “value-adders” – individuals and entities that for a wide range of motives undertake to bridge the gap between law in its native format (as issued by courts, legislatures or parliaments, and government ministries or agencies) and either members of the public directly or lawyers and other legal intermediaries serving them.

The goal of effective public access to law engages all four, but its animating concern directs attention initially to individuals and families confronting legal issues in their daily lives and activities. At some risk of getting entangled in the details of one jurisdiction’s law and institutions this paper will employ one such issue to illustrate its central argument, relying on the reader to extrapolate from this single US example to other situations, issues, and legal systems. The aim will be to persuade that:

Standing alone, collections of primary law sources – judicial opinions (judgments), legislation (acts), and regulations (statutory instruments) – are inherently inadequate. No matter how accurate, comprehensive, up-to-date, and free, they comprise, at best, a foundation layer – essential to but far from sufficient for meaningful public access. Effective public understanding requires editorial additions of diverse kinds that integrate,

evaluate, and interpret. For this reason, opening “free access” sites to third-parties who would add value in these ways is essential to their success in achieving their underlying aim.

The illustrative case concerns owners of two adjacent residential properties situated in New York State. Their lots are relatively small, each holding a modest house. The neighbors’ need for legal information, interpretation, and guidance arises out of the placement of a simple wooden fence. This fence, now in need of repair or replacement, was erected years ago. Neither owner knows exactly when that was since neither built it. Indeed, all they know is that the fence was firmly in place at the time each bought his house and lot. Stripped of further detail the legal problem confronting these two parties is that the fence does not correspond to the boundary between their lots set forth in the respective title documents – recently retraced on the ground by a land survey. Instead, the fence runs in rough parallel 30 centimeters or so to one side of that line. This raises such questions as whose fence it is, whether one of the neighbors has the right to demand that the fence or any replacement be moved or whether, alternatively, the other has acquired full ownership rights up to the fence. Henceforth, this legal puzzle will be referred to simply as the “misplaced fence case.”

2 Access barriers that citizen must overcome

For members of the public facing issues like these, an informed understanding of present legal rights and the consequences of actions they might be tempted to take requires more than access by means of a search engine to a large collection of court decisions, compiled legislative acts, or both. While this general proposition may appear self-evident, there is value in reviewing some of the reasons that is so.

2.1 Law’s specialized language and conceptual framework

To begin, members of the public without training or background in law will often lack knowledge of the legal concepts and terminology essential to a fruitful

search for court decisions or legislative enactments bearing on their situation. Confronted with a lack of correspondence between fence and property line, the lay person's query – on Google or using the search engine of a public law site – will far more likely employ terms like “fence,” “boundary,” or “survey” than “adverse possession,” “easement by prescription,” or “practical location.” The search will, as a consequence, be at once too restricted (missing key statutes altogether and relevant cases involving driveways, flower beds, bird feeders, sheds, and child play structures) and insufficiently limited (retrieving myriad judicial opinions or statutory provisions of no relevance to this particular situation).

2.2 Confusion over multiple jurisdictions

In many legal systems, problems like those posed by the misplaced fence case present lay individuals with a second threshold challenge – namely, determining what level or levels of government (national, state or province, county, town or city) speak most directly and authoritatively to the matter and govern the resolution of any underlying disputes over law or fact. By virtue of training, a US lawyer is able to begin this particular research task with the knowledge that so long as the case concerns privately held land located in New York, the relevant law is to be found in the statutes and court decisions of that state. This allows legal materials from other states, federal statutes and decisions, and local ordinances to be disregarded. Ordinary members of the public are unlikely to be so clear about where to begin or how to focus their inquiry.

2.3 Research habits and expectations formed pursuing non-legal topics that are currently far less effective with legal issues

Those already comfortable with and facile in using the Internet to gather information will almost inevitably begin their hunt for answers to legal questions with Google, Yahoo, Bing or some other general purpose Internet access tool instead of hunting down a dedicated legal information site. Their experience

gathering information bearing on issues of family health or home repair will guide their approach to law. Rarely will this lead to relevant cases, statutes, or regulations. That is, in part, a consequence of how tools like Google are currently designed but also the result of the barriers posed by legal terminology and law's institutional structure, as well as the unfortunate decision by many law sites to exclude external search engines.

2.4 The incompleteness of online legal materials

Few public access law sites reach back more than a decade or two and many gather decisions from but a limited set of courts. Yet on most topics, some important judicial opinions will date from an earlier period. On others, decisions of lower level courts may be more helpful than those of the jurisdiction's highest court. The misplaced fence case illustrates both points. The collection of New York cases held by the Cornell's LII does include a directly relevant 2006 decision by that state's highest court.¹ It does not, however, include numerous earlier potentially useful decisions of that court nor any decisions of New York's lower courts, some of which address facts more closely analogous to this particular case.²

2.5 The need to connect later decisions or enactments with earlier ones on which they may have an effect

No free access source of New York case law suggests to a researcher who has found the 2001 decision of an intermediate appellate court in *Bockowski v. Malak*³ that a later decision by the state's highest court casts substantial doubt on its continuing authority.⁴ No such site provides any indication that the New York legislation on adverse possession was subject to significant change in 2008.⁵

¹ See *Walling v. Przybylo*, 7 N.Y. 3d 228 (2006), http://www.law.cornell.edu/nyctap/106_0084.htm.

² See, e.g., *Bockowski v. Malak*, 280 A.D.2d 572, 720 N.Y.S.2d 557 (2d Dep't 2001).

³ *Id.*

⁴ See *Walling v. Przybylo*, *supra* note 1.

⁵ N.Y. Laws 2008, ch 269.

The state's online compilation of statutes does incorporate those recent amendments but provides no indication of the date or nature of the changes.⁶ The amending legislation is available at the state legislature's site.⁷ There is, however, no link between the compilation and the amending text nor is a user provided the identifying information necessary to retrieve the amending legislation. Yet only by examining its provisions can one learn the effective date of the changes.⁸

2.6 The need to integrate materials generated by different branches of government

In the US legal system and others, judicial opinions on many, if not most, topics cannot be understood apart from pertinent statutes nor can those statutes be read intelligibly apart from court decisions interpreting them. As noted previously, law emerging from both sources is subject to discontinuous change. A 2001 court decision that appears to speak authoritatively to an individual's situation may be totally undercut by a subsequent decision of a higher court or by legislative act. Particularly in the latter case there may be a question of effective date, i.e. whether the change applies to the situation at hand. Few "free access" sites assist members of the public in assembling and integrating the relevant sources across the institutional divides that separate courts and their opinions from legislatures and their enactments and ministries or agencies and their promulgations.

⁶ See Laws of New York, <http://public.leginfo.state.ny.us/menugetf.cgi> (Real Property Actions and Proceedings Law § 521).

⁷ Bill Status Search by Bill Number, <http://public.leginfo.state.ny.us/menugetf.cgi> (Bill No. S07915, 2007, signed into law as Chapter 269, 2008).

⁸ Section 9 of the amending legislation provided "This act shall take effect immediately, and shall apply to claims filed on or after such effective date." The legislative site reports it was signed into law on July 7, 2008.

3 The critical role played by editorial additions to primary texts and expert commentary

Lawyers and other legal professionals have far less difficulty than other members of the public overcoming the first three of these barriers. However, because of the substantiality of the second three, commercial information providers serving this sector compete vigorously for market share by offering editorial materials that integrate and interpret primary law documents. In print form such materials, sometimes packaged directly with those documents, have long employed techniques of categorization, textual explanation or summary, citation of key authorities, and periodic updating. The shift to electronic documents has made it possible to do some of this work programmatically. Software can search for, extract, and create links from all explicit references to prior cases, statutes, court rules, and regulations in judicial opinions. Similarly those offering collections of the referenced materials can build reverse indices, by searching for citations to documents they hold and automatically generating links back to the source.

Unfortunately, however, particularly when different organizations are responsible for disseminating legislative and judicial output, the second step is rarely taken. The Web site of the New York State Law Reporting Bureau is typical. Here are two paragraphs from the state's highest court's most recent opinion interpreting the New York statute setting out the elements of a doctrine centrally important to the misplaced fence problem.

Adverse possession must be proven by clear and convincing evidence (*Ray v Beacon Hudson Mtn. Corp.*, 88 NY2d 154, 159 [1996]). "Where there has been an actual continued occupation of premises under a claim of title, exclusive of any other right, but not founded upon a written instrument or a judgment or decree, the premises so actually occupied, and no others, are deemed to have been held adversely" (RPAPL 521).

To establish a claim of adverse possession, the following five elements must be proved: Possession must be (1) hostile and under claim of right;

(2) actual; (3) open and notorious; (4) exclusive; and (5) continuous for the required period (*Belotti v Bickhardt*, 228 NY 296, 302 [1920]; see also *Van Valkenburgh v Lutz*, 304 NY 95, 99 [1952]; *Spiegel v Ferraro*, 73 NY2d 622, 624 [1989]; *Ray v Beacon Hudson Mtn. Corp.*, 88 NY2d at 159). Here the required period is at least 10 years (see *Ray* at 159).

Walling v. Przybylo, 7 N.Y. 3d 228, 232 (2006). None of the case citations in this excerpt are linked because the decisions to which they refer are not held in the bureau's public access database. (Although at least one is accessible elsewhere on the open Web.) The 2005 decision of the intermediate appellate court in *Walling*⁹ is retrievable at the bureau's site, but a researcher finding it there through a search is not informed of nor linked to the subsequent ruling in that case on appeal. Section 521 of the state's Real Property Actions and Proceedings Law cited in the Court of Appeals decision is, in its current form, accessible at a site maintained by the New York State Legislature.¹⁰ That public site offers a reasonably up-to-date compilation of New York statutes, but not in a format that enables linking to a particular provision. And just as the judicial site is not linked to the legislative one, the legislature's site contains no hint of the court decisions interpreting individual statutory provisions. Furthermore, as noted previously, the legislature's site provides no indication of when particular sections were passed or amended, nor the details of any such changes. Thus, the user has no way of learning from these open public sources that section 521 was amended in 2008 or that a new section 543 dealing with cross boundary encroachments was added at the same time, and that those changes applied to any claims not filed prior to the act's effective date in 2008.¹¹

Compare the editorial additions available to subscribers of LEXIS and Westlaw. Anyone retrieving the 2006 *Walling* decision on those high-end commercial systems finds it accompanied by:

⁹ *Walling v. Przybylo*, 24 A.D.3d 1 (2005).

¹⁰ See Laws of New York, <http://public.leginfo.state.ny.us/menugetf.cgi> (Real Property Actions and Proceedings Law § 521).

¹¹ See N.Y. Laws 2008, ch 269.

- headnotes that both summarize its principal points and endeavor to place them in larger context
- links to all decisions and statutory sections it cites
- links to other decisions with headnotes categorized to the same topics
- a citation service that gathers and links to subsequent references to the case in writings available through the same service, and
- links to commentary dealing with the topics covered in the case and framed by the query that retrieved it.

Anyone retrieving section 521 of the New York Real Property Actions and Proceedings Law on Westlaw or LEXIS finds it accompanied by editorial notes detailing the provision's history. These include a precise account of the changes made to this section by the 2008 amendments, their effective date, and a link to the full text of the amending legislation. That, in turn, informs the researcher of related changes in other sections. There are also annotations providing an overview of the section, links to pertinent commentary and forms, and case notes linked to the full text of the decisions they summarize.

Needless to say, the commercial services place all these valuable editorial additions to primary legal materials along with vast collections of commentary on legal topics, including the law governing New York boundary disputes, behind proprietary walls, secured by copyright and subscription agreements. They are aimed at and priced for a high-end professional market, not individuals in search of answers to the legal issues arising out of daily life. For strategic reasons, they are also offered on substantially discounted terms to the public bodies from which primary law emanates, thereby undercutting the incentive to build and maintain public sector systems with editorial enhancements of this type.

4 Making public access sites hospitable to third parties

Reliance on the commercial systems, limited mandates, and scarce resources dissuade most government free access sites from doing as the commercial

information providers have done. NGOs that have undertaken public access to law activities do not have the human or financial resources to go much beyond basic programmatic measures of integration – *e.g.*, cross referencing, dating, and perhaps limited annotating. Because of these limits and others, steps by “free access” sites that facilitate or, better yet, support value-adding efforts by scholars, legal professionals, organizations focused on particular social or legal issues, public agencies themselves, and even commercial legal information entities can have enormous leverage.

A few present examples suggest the potential.

- A page prepared by an NGO in the state of Maine that explains the rights of Maine workers to take time off from work to care for a new or ill child, summarizing the pertinent statutes, state and federal, and providing links to them texts as well as the regulations implementing the federal act.¹²
- A summary of Oklahoma guardianship law provided by a non-profit group dedicated to educating and supporting older residents of that state, which links point by point to the statute.¹³
- Commentary on the “Aviators’ Model Code of Conduct” prepared by the NGO responsible for its issuance that includes linked references to court decisions interpreting the terms “professional” and “professionalism.”¹⁴
- A law firm’s explanation of how Minnesota’s law governing the intoxication tests applied to automobile drivers compares to that for boat operators, linked to the pertinent statutory sections.¹⁵

¹² Time Off from Work - What Are My Rights?, http://www.mejp.org/family_leave.htm.

¹³ Guardianship Overview Senior Law Resource Center), <http://www.senior-law.org/Home/resource/guardianship-overview>.

¹⁴ Comment-AMCC-I.f-General-Responsibilities, <http://www.secureav.com/Comment-AMCC-I.f-General-Responsibilities.pdf>.

¹⁵ Minnesota’s DWI/BWI Breath Tests, <http://www.kanslaw.com/blog/minnesotas-dwibwi-breath-tests.html>.

- Another law firm's online newsletter summarizing recent statutory developments and court decisions in the field of employment law, linked in each instance to the primary documents.¹⁶
- Last and not least, interactive guidance on child employment regulations provided by the US Department of Labor anchored by links to those regulations.¹⁷

Third-party commentary of this sort can help members of the public surmount the barriers previously enumerated. Done well it bridges the gap between the language of law and the terms with which citizens are likely to describe a problem or frame an Internet search. It can furnish summary while guiding those in search of greater detail or supporting authority to primary law sources that are accessible on the Internet while also identifying those that are not. It can offer guidance on which jurisdiction's law applies and how the governing law has changed over time.

Unfortunately, all too few institutions that provide access to primary law make it easy or even possible for third parties to build on their collections in this way. The preparation of legal commentary for the open Internet remains a novelty with commercial law publishers endeavoring to keep it so. Yet only a handful of structural features separate those sites that encourage from those that frustrate wider development of this genre.

4.1 Openness to external search and linking

The situation in New York, already briefly described, is all too typical. The case law collection of that state's Law Reporting Bureau excludes external indexing. So does the only public site holding New York statutes. Moreover, the structure of the latter site prevents external links to individual provisions. Consequently, it is not possible for the LII or any other law site to prepare or host commentary that integrates New York decisions with New York statutes.

¹⁶ Labor and Employment Law Update, http://www.brouse.com/ClientUpdates_hidden/LEApr09ClientAdvisory.pdf.

¹⁷ elaws - FLSA - Child Labor Rules, <http://www.dol.gov/elaws/esa/flsa/cl/p16.asp>.

Among US public sites the one furnishing the clearest example of what openness to search and linking makes possible is the Oklahoma State Courts Network.¹⁸ It holds a comprehensive collection of decisions of Oklahoma's appellate courts together with a full compilation of the state's statutes. A search on a mistaken boundary problem on the case database using either Google or the site's own search engine retrieves decision texts which take full advantage of the resulting integration possibilities. These are illustrated by the disputed boundary case of *Francis v. Rogers*, 2001 OK 111. The Oklahoma Supreme Court's opinion in that case cites numerous earlier Oklahoma decisions and two statutory sections. All those references are linked to the cited documents. The opinion text as delivered from the site carries a list of all subsequent decisions that cite it. Moving from the decision to either of the pertinent statutory provisions brings up for each a linked list of all Oklahoma cases in the collection that refer to it.

4.2 Enduring document addresses that can be derived from standard citation information

Oklahoma's collection of statutory and case law is not merely integrated; it is open to external editorial enhancement in the following critical sense. The database is structured so as to allow external links. Third-party commentary on Oklahoma law governing boundary disputes (or any other topic) can link to relevant primary sources, both judicial opinions and statutory provisions. And importantly the links to specific authorities can be derived from their standard citations.¹⁹ As a result it is a simple matter for an author treating any topic of Oklahoma law to provide readers with a direct path to pertinent authorities.²⁰

For over a decade Oklahoma law has been retrievable in this elegant fashion. And decade-old links to Oklahoma primary law sources still function. By contrast

¹⁸ OSCN, <http://www.oscn.net/applications/oscn/start.asp>.

¹⁹ *Francis v. Rogers*, 2001 OK 111, can be retrieved with the URL <http://www.oscn.net/applications/oscn/deliverdocument.asp?cite=2001+OK+111>. The governing statute, 12 Oklahoma Statutes §93, can be retrieved with <http://www.oscn.net/applications/oscn/deliverdocument.asp?cite=12+O.S.+93>.

²⁰ See Memorandum, Resources for Dealing with Campus Demonstrations, <http://www.okhighered.org/admin-fac/memo-studentdemonandprotests.pdf>.

countless public law sites in the US require authors who would link to documents in their collections to determine URLs through case-by-case retrieval. Moreover, they will, too often, restructure without attention to the importance of preserving existing external links.

Finally, openness to external search and links can and therefore should enable external search links, i.e. author-prepared queries designed to retrieve all documents on a topic rather than a single selected one. Such a link directed at the Oklahoma State Courts Network using the terms “adverse possession” and “fence” currently retrieves a set of twenty-five decisions, headed by *Francis v. Rogers*. A year from now the same link will, without further author attention, retrieve those same cases plus any subsequent Oklahoma appellate cases on this point.

4.3 Version identification, together with retention of earlier versions

Statutes are routinely subject to amendment. When one version of a statutory provision replaces another (or a judicial opinion is revised) it is important that both the change and its timing be noted. The Oklahoma site does this well. Another example of good practice is provided by the Minnesota Revisor of Statutes. The principal Minnesota statute bearing on boundary disputes appears in an online statutory compilation offered by that office which contains all changes through the year 2008.²¹ For that section and all others the compilation furnishes a notation of years in which changes were made. Each notation is linked to the full text of the amending legislation. Furthermore, the site retains complete compilations from previous years. They are not removed from the database. An author explaining a 2007 change in state law on a specific point can cite and link to the altered provision as it existed prior to amendment. Section 541.023 was amended in 2009. That amendment will be incorporated in

²¹ Minn. Stat. § 541.02 (2009), <https://www.revisor.leg.state.mn.us/statutes/?id=541.02>.

the following year's compilation, but the pre-amendment version will continue to be accessible.²²

4.4 Hospitable licensing terms

For value-adders who would or must do more than link, the terms on which primary legal texts themselves can be extracted in order to be enhanced with metadata, links, or editorial notes become critical.

Reflecting practices established when print publication by a single “official publisher” was the norm and a desire to preserve the value of authoritative legal data as an item for exchange with preferred redistributors, far too many public bodies in the US still assert copyright in the legal texts they issue. Others attempt to achieve comparable control over redistribution using measures such as copyrighting hard-to-separate material they have added to the core legal texts or conditioning access upon agreement to restrictive licensing terms.

On the prior point, the site of the Minnesota Revisor of Statutes was offered as an example of good practice. On this one it does not earn high marks. Every section of the compiled Minnesota Statutes available at its site carries the notice: “Copyright © 2009 by the Revisor of Statutes, State of Minnesota. All Rights Reserved.” Similar copyright claims are asserted by the Legislative Counsel Committee of the State of Oregon. In April 2008 that body demanded that a commercial public access site take down the compiled Oregon statutes if it did not pay a two-year \$30,000 licensing fee. The copyright the committee asserted was not in the legislative enactments per se but in “the arrangement and subject-matter compilation of Oregon statutory law, the prefatory and explanatory notes, the leadlines and numbering for each statutory section” as well as the index and annotations.²³ Because of the willingness of the public access site to litigate the

²² Its enduring URL will be:
<https://www.revisor.leg.state.mn.us/statutes/?id=541.023&year=2008>.

²³ See Cease, Desist & Resist - Oregon's Copyright Claim on the Oregon Revised Statutes, <http://onward.justia.com/useful-tools-web-sites-203-cease-desist-resist-oregons-copyright-claim-on-the-oregon-revised-statutes.html>.

matter, the state body, in the end, backed down.²⁴ Others, including NGO sites with limited resources and a need to maintain cooperative working relationships with public law-making bodies, would not have had that resolve.

Access conditioned on a highly restrictive license is illustrated by the online “official” collection of New York case law available through the New York State Law Reporting Bureau. Despite the removal of “headnotes, abstracts, summaries and points of counsel” in which the bureau claims a copyright on behalf of the state (and the page numbers one would need to use in citing specific passages from an opinion) users must agree to numerous restrictions before being granted access. Blocking any use by third-party value adders is the following provision:

User may not copy, download, store, publish, transmit, transfer, sell or otherwise use the New York Official Opinions or any portion of the New York Official Opinions, in any form or by any means, except (i) as expressly permitted by this Agreement, or (ii) if not expressly prohibited by this Agreement, as allowed under the fair use provision of the Copyright Act (17 U.S.C.A. § 107). The New York Official Opinions may not be downloaded and stored or used in an archival database or other searchable database. User may not sell, license or distribute the New York Official Opinions (including printouts) to third parties or use the New York Official Opinions as a component of or as a basis for any material offered for sale, license or distribution.²⁵

Legal information institutes must resist the temptation to be equally proprietary. They have every reason to seek to recoup their investment in the collection and enhancement of primary legal materials from commercial redistributors. On the other hand, they must be leery of licensing practices that frustrate complementary, public access activities by others, including commercially operated public access sites.

²⁴ See *Oregon v. Justia*, <http://www.citmedialaw.org/threats/oregon-v-justia>.

²⁵ New York Official Reports Service, <http://government.westlaw.com/nyofficial/search/default.asp?tempinfo=SEARCH>.

4.5 Going beyond enabling to the active encouragement of complementary work by third-parties

Print norms and practices continue to dominate the preparation of law commentary, whether it be articles and longer works written for a professional researchers or explanatory material written for members of the public. Although bodies that disseminate information about law have come to recognize the Internet as an important distribution channel, most still use that channel to distribute works designed to be printed. References to underlying legal authorities – statutes, court opinions, agency rules – are prepared and presented as citations and not as links. The opportunity to provide readers a direct path between explanation or interpretation and those authorities is too rarely exploited.

That is not true of the large-scale proprietary systems. They have the resources to take commentary prepared for print distribution and integrate it with their online libraries of primary authority. To begin they take print journal articles as well as books of commentary to which they have acquired rights and convert explicit citations to hyperlinks. Commentary loaded onto Westlaw or LEXIS is given functionality it will never have on the page. A second and more recent aspect of integration becomes manifest when a researcher is searching a collection of statutory or case law. Upon retrieval of the results she is presented not only with the primary texts identified by the search terms, but also with links to pertinent commentary held in the system's database.

For anything at all comparable to develop across the open access portions of the Web, sites that bring primary legal materials to the Internet must go beyond removing barriers. Affirmative encouragement of third-party editorial enhancements and commentary is critical.

Such encouragement can take many forms. The simplest is author and publisher education. A site structured so as to permit direct access to statutory provisions or cases by links derived from citations written in customary format should document the link formula and educate authors and distributors of legal

commentary on the ease of integrating their texts with the underlying authorities. An early section of the Cornell site contained pages explaining how to link to LII materials.²⁶ Our colleagues at AustLII have gone a major step further, namely, offering third parties access to software that automates the linking process. Commentary uploaded to “UserMark – The AustLII Automated Legal Markup Tool” returns the text with citations to items in the AustLII collection converted to links.²⁷

Providing models of effective use of this still quite new environment is another form of encouragement. In varying degrees public access sites themselves provide indices, finding tools, and even works of commentary that enhance the usefulness of their own collections of primary law. Less common but perhaps more important are demonstrations of the power of commentary that integrates and adds value to primary law held by others. The jurisdictional complexity of the US setting removed any temptation to build a comprehensive primary law collection from the Cornell LII. From its earliest days it has engaged in diverse forms of building on other primary law sites – offering legal commentary anchored by materials held at sites, government and non-government operated, and tables that enable members of the public to move from a general summary or issue guide to the governing law of the US jurisdictions in which they live. The first of these materials were created by law students in consultation with and under the supervision of law school faculty. Today these and other interpretive materials are prepared with the assistance of experts and authors without any such pre-existing ties to the host institution through a wiki framework.²⁸

A final form of third-party enhancement is suggested by commentary which I first prepared before public access legal materials moved onto the Internet. When begun in the late 1980s this integrated treatise and primary law database on US Social Security law required a degree of access to and control over case law, statutes, and agency material that was possible only in collaboration with one of

²⁶ See LII building blocks, <http://www.law.cornell.edu/blocks/collect.htm>.

²⁷ See AustLII – User Tools: UserMark, <http://www.austlii.edu.au/techlib/usermark/>.

²⁸ See Wex, <http://topics.law.cornell.edu/wex/>.

the major online services. With that collaboration it was possible to connect commentary with all relevant primary material in ways totally impossible with print. As author I wasn't limited to citing individual cases or statutory provisions but could, as appropriate, assign metadata to the primary authorities that would allow a reader to follow a search link capable of retrieving all cases or sections bearing on a particular point. And within that initial set, the user could by adding terms to the author's search restrict it further by judicial district or date or the presence of particular factual elements.

In today's environment, public access law sites have in many countries and fields removed the need for scholars and other authors of legal commentary to secure commercial partnership in order to connect their work with the underlying cases, statutes, or agency rules. A high percentage of the authorities that were integrated with my treatise first on LEXIS and subsequently on CD-ROM now reside on the open Web, placed there by numerous entities, including the twelve federal circuit Courts of Appeals, the LII, and the US Social Security Administration. A key ingredient still missing is the capacity for an author to assign tags to documents located at multiple sites, metadata that when used together with full text search would enable researchers using the commentary to retrieve the most relevant and recent cases or agency rulings bearing on the issues that brought them to the author's work. Until that capacity becomes available on the open-access web, it will remain a far less attractive and effective environment for those whose ambition is to organize, synthesize, interpret, and explain a field of law.

5. Not only a better informed public but improved and less costly legal services

Adding value to primary law for the public, if done well, will also deliver value without charge to lawyers and other commercial players. That should not be a ground for objection. To the extent that quality legal commentary can be placed and sustained on the open Internet, outside the subscription boundaries of high

priced legal databases, it should reduce the upward pressure on the cost of legal services and increase the quality of professional work. Furthermore, to the extent that it permits those seeking assistance from a lawyer to enter the relationship with better information, the result is likely to be better outcomes.

Without effective efforts to enable and encourage creative work that adds value to primary law collections, both for the public directly and for those rendering legal services to its members, free access to law activities will have far greater symbolic than practical value for those they aim to serve.