

# Globalization and Legal Information Management

[Uncorrected Draft]

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## Introduction

Any work which deals with legal information management, whether explicitly in an international context or not, must consider the impacts of globalization. Globalization in all its various manifestations and ramifications is a complex series of processes which has affected all our lives. It has had a profound impact on law, the legal profession and legal education and so it has also had at least an equal impact on legal information management, on law libraries, and on the profession of law librarianship. The consideration of globalization and legal information implies an examination of trends and challenges affecting the future of legal information, law libraries and of law librarians as well as its recent past

This chapter is a relatively brief survey of what globalization means in the field of legal information management and what effect it has had and will have on a range of activities and policy areas relevant to the practice of legal information management. There are firstly some comments towards a definition of globalization for the purposes of this chapter and then a survey of the following in the light of that definition: legal systems, information consumers, legal information needs, information and management, legal publishing, digitization, intellectual property rights, lobbying and advocacy on policy issues (the politics of law librarianship), international networking, and legal information managers and law librarians of the future.

The reason for describing this chapter as a relatively brief survey is that the subject of globalization, even in the context of legal information management or more narrowly law libraries, is big, very big, and affects almost everything. In fact it might be difficult to mention changes which have not been affected by globalization. Although

the survey is broad in scope and necessarily superficial in its treatment of each of the areas which are mentioned, the other chapters in this book each concentrate on an aspect or policy area affecting legal information management and deal with the subject in more depth. In this way I hope this chapter may form an introduction to the other chapters in the book.

It is particularly appropriate that a discussion of globalization should appear in a book on international legal information management sponsored by and published in association with the International Association of Law Libraries (IALL). The IALL is itself a product of globalization and, in earlier perceptions, internationalization and the increasing interdependence of our world. It was founded in 1959 in recognition that the roles of law libraries and law librarians were already affected by the growing importance of international legal relationships and systems and the documentation which emanated from them. Any member of the IALL could write this chapter, each from a different perspective and each with a different emphasis.<sup>1</sup> It is hoped that by assembling a diverse group of authors, each associated with the IALL, a broad range of approaches and opinions will be captured within this book.

All the developments and changes imply trends for the future of law libraries and new challenges and opportunities for law librarians in their vital role in the service of the administration of justice and the rule of law in a national or international context.

## **Globalization**

Internationalization is not new; human interaction across borders has existed since national borders were invented, particularly within empires and their trading areas. As a term, however, Globalization has become widely used only since the 1980s. Is globalization just a buzz word, a fashionable way to refer to a complex series of unrelated developments, or a useful shorthand way of describing complex groups of related changes with a discernable trend? Since the term refers to changes in many aspects of our lives and implies relationships between those aspects of our lives, it can be approached, described and explained in a variety of contexts, for example economic, business management, sociological, and political (Muchlinski 2003). The term is also

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<sup>1</sup> A talk on 'The Impact of Globalization on Law Libraries' was given by Betty Haugen at a session organised by IALL at the 2005 IFLA World Congress in Oslo (Haugen 2005).

intimately bound up with the transformation of processes of communication and the impact of information and communications technology (Susskind 2006). Each of these different approaches and many others merit full analysis which is not possible in the scope of this chapter. However, one can discern the impact of globalization on legal researchers and the law librarians who serve them as in areas of interest as diverse as crime, Aids, the music industry, and general principles of human rights.

Globalization is not just a high rate of internationalization, an increased rate of transactions between nation states; it is also a qualitative change to global structures. If globalization is difficult to define in all its various aspects, can we discover the direction of travel of the multitude of changes which it encompasses? One thing is certain, that no adequate definition can be found on the Internet. There are a large number of sites which can be retrieved by a simple search for globalization (or 'globalisation') but each seems to promote a particular point of view. This only emphasises the role of the librarian in attempting to provide impartial or balanced information.

Does globalization imply free trade, a way to lift poorer countries out of poverty, to promote interdependence and therefore avoid conflicts, to promote democracy and demonstrate its material rewards, to enable diverse lifestyles, and create wealth? All are benefits claimed for globalization, but they beg the question of why there are such vociferous critics and such active demonstrations against some organs of globalization, for example, world trade. Some critics have a very different understanding of globalization and identify within it changes which engender a transfer of power from nation states to supranational corporate institutions not accountable to democratic processes, the pursuit of cheap labour and unregulated production around the world, and the commoditisation of information and knowledge.<sup>2</sup>

So globalization encompasses what are perceived as contradictory trends (Fischer 2009). It is not just a process or group of processes heading in one direction but contains vigorous opposing reactions. Some of the icons of globalization in the commercial arena are fast food chains which dream of outlets for every 30,000 people around the globe. The book jacket of *Fast Food Nation* carries the message 'To a degree both engrossing and alarming, the story of fast food is the story of post-war America' (Schlosser 2001). To a degree, it is also a history of various aspects of globalization. One of the critical

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<sup>2</sup> See Rikowski (2005) on globalisation, information and libraries.

reactions to this phenomenon is the Slow Food movement, a non-profit organisation which promotes diversity and cultural identity and originated in Italy in response to the expansion of the fast food corporate enterprise.<sup>3</sup> A more recent academic work treats 'slow living' which develops concepts of post-materialism and the new traditionalism, (Parkins and Craig 2006). Globalization, internationalization, and commoditization may be inevitable processes and may bring significant benefits but the counter-trends and reactions to them are also significant and will also have significant impacts on our lives. These counter-trends are significant in areas of policy affecting legal information management and law libraries even where globalization appears to be the overwhelming influence.

### **Legal Systems**

The internationalization of law has a long history. Since nation states formalised their relationships, their citizens have entered into various transactions, and international legal orders were created. The globalization of law has become a familiar concept not just with the growth of trans-border economic activity; every aspect of law has been affected by the interconnectedness of our world.<sup>4</sup> The movement of people, goods and information creates problems and disputes which national law struggles to deal with and brings more complex problems of public and private international law. To some degree, whole areas of law are subject to supranational regimes such as international treaties or regional trading and political legal environments such as the European Union. Norms are increasingly created by non-state institutions which have proliferated and there is a growing acceptance of the emergence of international norms, such as fundamental principles of human rights.

If international aspects of law and legal information management were important before, they are far more important now. It is now necessary, even for local law practices and local judiciary at district level, to be aware of the international aspects of

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<sup>3</sup> The Slow Food movement <[www.slowfood.com](http://www.slowfood.com)>, accessed 25 June 2010.

<sup>4</sup> A keyword search of the *Index to Foreign Legal periodicals* in September 2010 covering articles from 1985 to date shows 236 using the word globalisation (or globalization) of which 88 were published before 2000. In HeinOnline's Law Journal Library a full text search retrieved 23 articles between 1970-79; 316 between 1980-89; 6,431 between 1990-99; and 25,154 between 2000-09.

litigation (Dejarnatt and Rahdert 2010)<sup>5</sup>. Disputes which are litigated even in the lower courts increasingly require the consideration of legal systems other than local domestic law. In some legal systems, comparative legal research has been built into the fabric of the legal system itself. For example in South Africa the contemplation of constitutional rights includes the comparative study of legal norms in other legal systems, not just during the framing of its progressive constitution, but also to an extent in its later interpretation by the courts.<sup>6</sup>

There has been significant convergence of national legal systems in recent years. As more nations subscribe to more international treaties and international legal orders, their national legal systems include more similar provisions. Further, there has been a gradual but nonetheless dramatic recognition and adoption of fundamental legal norms and universal rights, which is one of the most valuable and important phenomena linked to globalization.

The process of rebuilding and reconstructing the legal order of many countries continues around the world. Huge strides have been taken in the introduction of new constitutions and new legal frameworks for economic activity. The wholesale rewriting of legal systems in Central and Eastern Europe in the post-communist era has involved large scale borrowing from existing legal systems. Armies of legal advisers have been made available to advise on the best models on which to base new legislation. This may be a process of imparting knowledge although at times it may seem to display a new aspect of cultural imperialism. In order for it to be a success, it is necessary for the local legal systems and their history to be understood, a reciprocal imparting of knowledge. The reception of law is of course not new and one needs only to point to the spread of the English common law or the adoption of well developed codes of laws from some European countries which have been adopted by countries around the world.

One could also point to examples of the coming together of the civil and common law systems in Europe (Markesinis 2000) including the controversial but significant project for a European Civil Code (Hartkamp 2004) or at least, for example, a European

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<sup>5</sup> This paper includes the results of a survey of the approximately 10,000 members of the Philadelphia Bar Association regarding the extent to which they encounter foreign and international law issues in practice.

<sup>6</sup> Constitution of the Republic of South Africa 1996, Chapter 2, s. 39 Interpretation of Bill of Rights, <<http://www.info.gov.za/documents/constitution/index.htm>>, accessed 25 June 2010.

Contract Law.<sup>7</sup> These projects seem to be good examples of both the movement towards global or at least regional law and also the counter trends.

As with many aspects of globalization, how far can the process go? How far is law an expression of culture and identity and how far will that culture become globalized? Will there be a global moral community? The expressions of cultural identity within the laws of a nation state are deep-rooted and opinions differ as to whether changes in the law driven by globalization can lead to changes in society and how far the reverse will take place.

Discussing comparative law methodology and the importance of comparative legal studies and legal information, Muchlinski suggests that:

...one is left with the feeling that comparative law method is at a politically significant cross-roads: either it takes a more academically credible route, along the lines suggested by Legrand and others, towards the study of difference, with all the problems of political diversity that that entails for the ideal of a global world order, or a cosmopolitan law - if you like. Or, it continues to be based on a search for crude a-historical, and culturally suspect, similarities of meaning and purpose in legal phenomena, which will deliver the illusion of an emergent global law serving as the legal expression of globalisation.

(Muchlinski 2003, 239-240)

As a methodology to address these questions and to understand the global legal environment with all its convergence and diversity, comparative legal study is an important element in its own right both for research and as part of the legal training of lawyers and forms a part of the environment in which legal information managers operate.<sup>8</sup> Moreover, globalization challenges not only national legal orders and comparative legal studies but 'seemingly offers fundamental challenges to contemporary legal theory' (Twining 2000, 10).

### **Information Consumers**

In university law schools in the United Kingdom there are more law students than ever

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<sup>7</sup> The Commission on European Contract Law, the Lando Commission, whose website at <[http://frontpage.cbs.dk/law/commission\\_on\\_european\\_contract\\_law/index.html](http://frontpage.cbs.dk/law/commission_on_european_contract_law/index.html)>, accessed 25 June 2010, contains a bibliography, many of whose materials are available freely for download.

<sup>8</sup> Comparative legal studies are treated in depth in chapter # on 'Comparative Law: Academic Perspectives' by Teresa Miguel.

before. In 1996/97 there were 54,767 law students<sup>9</sup> (45,539 from the United Kingdom, 3,168 from the rest of the European Union, and 6,060 from other countries). This number had grown to 92,110 in 2008/09 (74,105 students from the United Kingdom, 5,480 from the rest of the European Union, and 12,525 from other countries) a 68.2 per cent increase overall in 12 years (a 74 per cent increase in students from the rest of the European Union and a 106.7 per cent increase from other countries). In addition there are many more programmes of study which involve some time, perhaps a semester or perhaps a year, overseas and may lead to a dual degree and count towards professional qualification in two jurisdictions. Students at most institutions are also likely to be drawn from more diverse ethnic, cultural and educational backgrounds and possess a wider range of knowledge and ability than ever before. These differences expose built-in assumptions in teaching and assessment, and in the provision of services including library services.<sup>10</sup>

This aspect of globalization of legal education leads to an increasing need for intercultural skills among law librarians and all those who come into contact with the increasingly diverse student constituency.<sup>11</sup> There is an increasing need for many students to undertake language skills training before undertaking their main legal education. About thirty percent of those undertaking Master's degrees in laws of the University of London in 2008/09 took language classes before starting the degree.

Concentrating on the term 'globalization' alone, there is an increasing number of Master's degree courses offered around the world which will bring together students from many countries and exemplify likely areas of development of the law: 'Public' international law and globalisation (University of Aberdeen), 'International business law and globalisation' (University of Utrecht), 'International mobility, globalisation, and law' (University of Kent), 'Globalisation and international law' (Dublin City University), 'Globalisation and law' (Maastricht University), Globalisation, justice and law' (Ottawa University) and many others around the world. Although not in a course

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<sup>9</sup> According to the Higher Education Statistical Agency <[www.hesa.ac.uk](http://www.hesa.ac.uk)>, accessed 25 June 2010, including part-time and full-time students at undergraduate and postgraduate levels.

<sup>10</sup> See chapter 4, 'Global Legal Education and Its Implications for Legal Information Management' by Michael Crommelin and Carole Hinchcliff.

<sup>11</sup> See the cross-cultural training resources at <[http://www.ukcisa.org.uk/about/material\\_media/pubs\\_crosscultural.php](http://www.ukcisa.org.uk/about/material_media/pubs_crosscultural.php)>, accessed 28 September 2010.

title, the word globalization appears in the materials advertising many of the LLM programmes available from law schools wherever they are based. It is also clear that the market for the LLM degree, as well as the scope of the curricula, is global.

There are more distance learning and part-time students in study than ever before. These students require a different pace of delivery of teaching and training with an emphasis on self-directed and self-paced learning (which of course also delivers a cost saving for mass higher education). Both in the delivery of research skills training and in the general requirement to have an ever closer relationship between delivery of library and information services and delivery of teaching, librarians are increasingly required to take roles as trainers and teachers, and many are now encouraged to take qualifications in teaching in higher education. There are implications in all this for the availability of library and information services, access to these services and all aspects of their delivery. These go further than the delivery of services on a twenty four hour basis including extensive remote access to information; they also impinge on the library's role in constructing virtual learning environments and virtual research environments. The customisation or indeed commoditisation of the delivery of teaching and learning materials and all supporting information resources requires a growing collaboration between librarian and teacher. The same need for collaboration exists in the support of research, albeit the opportunities for commoditisation and the predictability of demand, one hopes, are much less. The library is less and less a separate service and increasingly must be one sufficiently aligned with and in real collaboration with the activities of the law school.

Practising lawyers and academic lawyers are also much more mobile in the new environment and both law firms and the faculties of law schools are more likely than ever before to count more lawyers who originally qualified in another jurisdiction under a different legal system. This enriches their institutions and allows a much wider scope for legal business or the offer of courses of comparative and international scope, and places additional demands on the legal information resources and services provided for them. The formation of global law firms by collaboration, merger and takeover has had the same effects in terms of scope, and has enhanced the firms' access to expertise, authoritative legal information and advice (Bierman and Hitt 2007; Sokol 2007).<sup>12</sup> Law

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<sup>12</sup> See chapter 5, 'Global Legal Practice and Legal Information Management' by Tanya Du Plessis



Schools have more recently formed multinational consortia to enhance the ability to offer global law courses, such as the Center for Transnational Legal Studies established in 2008 as a joint venture between ten leading law schools from around the world.<sup>13</sup>

Information literacy is an essential to study and research.<sup>14</sup> Providing training in the evaluation and organisation of information is an increasingly important role for law librarians and some universities now have fully realised information literacy plans in place. As more students undertake more extended writing projects, research skills training becomes even more important. Although training in legal research has become fully embedded as an assessed component of legal study in some countries, in many others there is still much to be achieved to obtain recognition of the importance of legal research skills training and to afford it the time and importance which it deserves within the framework of a law degree. The inclusion of training in international and foreign legal research in legal research skills programmes is still something that needs to be advocated even among the most developed programmes (Rumsey 2009; Dejarnatt and Rahdert 2010). The development from legal research training into an education in information literacy is a further and major step and one which the globalization of information consumers and resources demands.

The nature of study and of research and scholarly communication is changing in law as in other disciplines. The globalization of communications may liberate and speed the processes of collaborating in research and distributing its results, but it may also diffuse concentration and may even lead to the most popular result being accepted as the right result. 'In this electronic age we see ourselves being translated more and more into the form of information, moving toward the technological extension of consciousness' (McLuhan 1964, 57). The new online technologies and channels of communication offer great opportunities for teaching, reaching the distance learners and more diverse student community described above, but not all are equally successful or suited to teaching legal research (Herrick and Burriesci 2009).

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<sup>13</sup> See the website hosted at Georgetown Law School, <<http://ctls.georgetown.edu/>>, accessed 25 June 2010.

<sup>14</sup> Information literacy with specific reference to law forms chapter 7 by Ruth Bird, 'Legal Information Literacy'.

## **Legal Information Needs<sup>15</sup>**

In terms of the development and delivery of collections of legal information, there is obviously more material which is changing in content more quickly. This has been made possible by electronic publishing and delivery. There is also a need to make access to legal materials available from a wider range of jurisdictions including regional and international organisations.<sup>16</sup> The law itself has engulfed more and more areas of human activity with the growth of areas of study such as human rights, environmental law, information technology law, and other more recent and more niche-based areas of law. More than that, legal education and the practice of law have become broader, more inclusive and more diverse. The study of law has developed and grown to value other disciplines and has begun to incorporate the interdisciplinary patterns of study associated in the United Kingdom with socio-legal studies and empirical research in law.<sup>17</sup> In the practice of law, there is more need for business and financial information alongside legal information.

Therefore there is a necessity for legal researchers to have more frequent access to more publications in other disciplines. In larger general institutions there is a greater argument for combining collections and not maintaining a separate law library; gone are the days when law faculties and libraries operated in isolation from the rest of the university. However, there is still a role for specialist legal research libraries as centres of excellence and expertise to supplement the legal resources of libraries which may largely be occupied with supporting law teaching and unable also to support research in changing areas of law in sufficient depth.

Of course in the virtual law library where delivery of legal information is primarily in electronic form, it might be argued that the physical place of a law library

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<sup>15</sup> See chapter 4, 'Global Legal Education and Its Implications for Legal Information Management' by Michael Crommelin and Carole Hinchcliff.

<sup>16</sup> See a survey of the needs of researchers in the UK who require access to foreign legal materials (Clinch 2000) which led to the development of the 'FLAG' database of collections of foreign law in the UK, <<http://ials.sas.ac.uk/library/flag/flag.htm>>, accessed 25 June 2010.

<sup>17</sup> the Socio-Legal Studies Association in the UK, "where law meets the social sciences and the humanities", <<http://www.kent.ac.uk/slsa/>>, accessed 25 June 2010; see also the Nuffield Inquiry on Empirical Legal Research in Law, <<http://www.ucl.ac.uk/laws/socio-legal/empirical/>>, accessed 25 June 2010 and its report (Genn et al. 2006).

may be less significant. It is now the norm in some countries to expect 24 hour remote delivery of materials and of services from libraries. However, this has yet to be achieved even in relatively wealthy countries. It will require more sophisticated access management systems established at a national level with interaction to nationally purchased resources and a solution to the present model of licensing in order to be fully successful.

There is an expectation that services are customisable, for example 'My Space Library' services to create a personal information environment including relevant course materials, teaching materials, submission of course work, and all forms of administrative interaction with the university. The question remains what role librarians will play in creating these online services and whether, in relation to a variety of legal information resources, librarians within the institutions or commercial legal publishers will play the most significant role. At present the major legal publishers are working extremely hard to enable their products, which encompass the widest range of legal information content, to be integrated into the work flow of practising lawyers such that their product might saturate the market and become as indivisible from the work of their customers as Microsoft's products.

If we consider the counter trends to the scenario developed in the paragraphs above, one should note that students generally express need for physical library space in order to carry out their work in comfort and in a social and scholarly environment. Commoditisation of the delivery of some levels of legal education and its supporting materials may simplify and reduce costs. However, it is also clear that, as law schools become more diverse in their approaches and syllabuses and teaching methods, the need to customise local information environments for their own students and staff becomes more imperative both to achieve their own academic aims and to preserve their unique selling points and competitive advantage. There is also considerable evidence that, although online access to learning materials is very popular, many students would also like more contact time with teaching staff.

### **Information and Management**

Librarians have always been managers but the scope of their operations has grown. Particularly in law firms, but also generally, libraries are no longer only repositories of

published information but dynamic environments for the management of information. Librarians are proactive managers of external and internal information and the intellectual output of the firm or other institution. All that is wrapped up in the term knowledge management which is concerned with a much wider definition of information than the purchased output of publishers.<sup>18</sup>

In a global legal environment the efficient and strategic use of all information resources whether brought in or generated within the institution is an absolute necessity. During these changes, which might threaten the existence of libraries in the traditional sense, new opportunities have arisen for law librarians. The paradigm shift in the role of law librarians has been exemplified in law firm libraries for some years (Mansfield 1999; McTavish and Duggan 1999).

The emerging opportunities for new roles in information and knowledge management are accompanied by needs for re-skilling and by potential threats as the boundaries between roles of law librarians and practitioners become less well-defined. Some aspects of the role of the professional support lawyer may suggest the emergence of a true hybrid post combining legal and information skills.

Other institutions including universities have been slow to adopt this approach and slow to identify and make use of the skills of information managers and librarians. Librarians have filled the senior management posts of the combined library and computing services in many universities in the United Kingdom, thanks to their greater direct exposure to the needs of their primary constituencies of students and staff. However, although back in 1993 an official report recommended that all UK universities draw up an information strategy in the broadest terms (Joint Funding Councils' Libraries Review Group 1993), it has taken a considerable time for information management to be drawn into the heart of senior institutional management.

### **Legal Publishing**

The efforts of commercial legal publishers and of the free-to-internet publishers have gone a long way toward providing an electronic legal research library of up to date materials.<sup>19</sup> However there is still room for a large amount of printed legal materials of

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<sup>18</sup> See chapter 5, 'Global Legal Practice and Legal Information Management' by Tanya Du Plessis.

<sup>19</sup> See chapter 13, 'Shaping Electronic Collections in Foreign, Comparative and International Law' by

various types which are either not available in electronic form or there are good reasons why one should still purchase them in print.<sup>20</sup>

There is an ongoing process of globalization in commercial legal publishing through merger and acquisition. The largest companies have acquired huge portfolios of traditional national legal publishers.<sup>21</sup> This has enabled them to offer, in an increasingly electronic format, real progress towards a library of international legal materials although the process of integrating the various national libraries of legal materials into a seamless product has proved to be a long term project.

The companies are no doubt reacting to market needs and have made a huge investment in content and delivery systems. This has made it easier for customers to acquire foreign content offered via a familiar interface. In turn this promotes more dependence on fewer products and more inertia in the market, especially as products become more customisable and integrated into the workflow of the information consumer, making it more difficult to change suppliers. This has been exemplified by the launch of new 'platforms' or versions of the product which require consultants placed in each law firm retraining and merging the new product into each individual firm's intranet. The products become more akin to new versions of major software suites or operating systems and achieve almost as much penetration into organizations.

All this availability of legal information from around the world contained within sophisticated retrieval systems, which are updated frequently and supported extensively, comes at a cost. The cost, although shared by large numbers of customers around the world, must support all this plus the very high profit margins which are regularly reported by the largest of these publishing conglomerates. In 2007 after the introduction of a new version of a product in the United Kingdom, an informal survey by the British and Irish Association of Law Libraries showed that 45 per cent of academic institutions had a price increase of between 60 and 100 per cent in one year and increases ranged up to 533 per cent with the initial lowest buy-in price for the product having trebled. As institutions move from print to electronic products, the inevitable increases in price (and

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Marilyn Raisch.

<sup>20</sup> See chapter 12, 'Collection Building: Foreign, Comparative and International Law' by Holger Knudsen.

<sup>21</sup> See chapter 11, 'Globalization and Commercial Legal Publishing' by Kendall F. Svengalis.

in some cases the imposition of sales tax not levied on print materials), creates an inevitable temptation to reduce the amount of space devoted to libraries by relinquishing ownership of sets of printed materials. The danger is that database owners may believe they can increase the price to whatever level they choose since the institution no longer has any ownership over the information, only access to what the latest annual subscription can buy.

The countertrends to this are growing in number and strength. There is a welcome return of small and niche publishers as well as alternative publishing initiatives. There is now again a market for individual research monographs in a way that had almost disappeared some years ago as major publishers bought up smaller publishers and concentrated on in-house production.

Marshall McLuhan declared that 'Xerox made everyone a publisher'.<sup>22</sup> Now the Internet has made everyone a *global* publisher (and perhaps everyone an author). In the old model an author could create content but was not good at quality control, distribution, and preservation. Publishers controlled quality and the distribution but were not good at preservation. Libraries were good at long term preservation, bibliographic control, and sharing the content. Under the new model of communication the author or their institution has gained the ability to distribute but must also assume the responsibility of preservation. There has been a dramatic vertical integration of processes of communication which might threaten the traditional role of libraries through direct desktop delivery, but also the role of publishers (and their revenue streams) since content creators may be able to undertake quality control and distribution without the traditional costs of publication. Globalization offers the advantages of technical standardisation such that worldwide distribution can take place without either control or support of individual means of access to the material.

Free-to-Internet publishing, whether by institutions such as universities or governments, international organisations, or non-profit organizations, is now a major trend. It has the potential to replace a wide range of commercial products, particularly those which exist through the repackaging of free information without substantially adding to the value of that information.

There has been a continuing crisis in scholarly publishing as authors sign away

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<sup>22</sup> Marshall McLuhan, Interview with the *Washington Post* quoted in the *Guardian Weekly* 12 June 1977.

copyright and universities buy back the content. As the market shrinks and prices go up in a strange distorted economic model, the situation becomes unsustainable and has engendered government and European Union enquiries into academic journal publishing. One response has been the creation of institutional and disciplinary repositories of scholarly work which enhance institutional visibility while operating within a network of global interoperability and federated searching.<sup>23</sup>

Public institutions, government and courts are generally now accepting responsibility for publishing their primary legal materials and providing court assigned citations rather than relying on commercial publishers to repackage the information and sell it to information consumers. These developments have implications for various vital policy issues such as the need to verify authentic versions of information to reproduce it in a comprehensive and trustworthy fashion, to ensure access by the citizen, and to offer guarantees of long term preservation.<sup>24</sup> In some countries non-profit organizations have led the way in opening up free access to primary legal materials and have constructed large multi-jurisdictional databases. The Commonwealth Legal Information Institute,<sup>25</sup> for example, has enabled smaller jurisdictions to take advantage of its technical infrastructure to publish their own legal materials free to the Internet. Elsewhere in this book Graham Greenleaf describes the successes and struggles of the legal information institutes and others comprising the Free Access to Law Movement in releasing primary legal materials from restrictive practices and commercial agreements to make them available to the citizen.<sup>26</sup>

### *Digitisation*

There is also, of course, a huge accumulated corpus of legal materials of all types which have been published in the past and have yet to appear in electronic form. Although a proportion of the materials may be rendered into digital form by commercial publishers despite their age when there is significant demand, the majority of the materials may not offer a commercial opportunity for publishers. However, there are a growing number of

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<sup>23</sup> See <<http://www.arl.org/sparc/>> and <<http://www.openarchives.org/>> accessed 29 June 2010.

<sup>24</sup> These issues are discussed in chapter 9, 'Digitising the World's laws' by Claire Germain.

<sup>25</sup> <<http://www.commonlii.org/>>, accessed 25 June 2010.

<sup>26</sup> See chapter 10, 'The Free Access to Law Movement' by Graham Greenleaf.

projects to digitise existing resources to form shared national and international resources and there may be national infrastructures to encourage and support such projects. Collaboration is vital if best use is to be made of the available finance: there is no such thing as an institutional or even a national project.

Of course these projects, often based in libraries, tend to look small compared to the efforts of major projects which are worldwide in their scale. Those are generally based on a combination of image based delivery and full text searching based on an optical character recognition file of the text. One is from a non profit consortium of law libraries; another two are commercial, but in different senses.

LLMC Digital,<sup>27</sup> whose mission is both preservation of legal titles and government documents, and making the content accessible and searchable, is developing a very large global database of law, based on its their highly valued microform collections and on further ongoing digitisation of large collections. The Common Law Abroad project (Dupont 2001), for example, is characterised as a high quality project overseen by people with law library expertise concerned with bibliographical control, intended to recoup costs from subscribers but operated overall on a non-profit basis.

HeinOnline<sup>28</sup> is an enormous commercial project that has a large range of US content and a quickly growing amount of foreign and international material which has established itself as an essential service to many legal research libraries. The company, with generations of experience in the provision of legal materials, has shown considerable sensitivity to the concerns of library managers about the dominance of the commercial duopoly and about guarantees of long term preservation.

The other project is of course the Google digitisation project which makes materials freely available on the Internet without cost to the information consumer. There is no space here to chronicle the long saga of discussions, negotiations, litigation and compromises which have characterised the life of the project nor the different cultural significances attributed to the project by different regions and countries. The sheer scale of the project dwarfs all other digitisation projects but it is well known that the project also suffers from large quantity but low quality with the drawbacks of bad

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<sup>27</sup> <<http://www.llmc.com/>>, accessed 29 June 2010.

<sup>28</sup> <<http://heinonline.org/>>, accessed 29 June 2010.



images, missed pages, censorship, and poor bibliographic control. Major university libraries with large digitisation projects (such as that at the University of Michigan) were each digitising only about 5,000 volumes each year whereas the Google project has already accomplished the digitisation of millions of volumes. However, even though they are made available free on Internet, the page images are not in the public domain. In this connection one should be aware of the reservations voiced by Greenleaf about the usefulness of the Google project for legal research.<sup>29</sup>

The Google Project example highlights all the questions arising when libraries are no longer unique repositories of material. Interestingly universities which have benefited from collaboration in the Google project and obtained copies of the page images are now looking to a role where they add value to the images and a new task of organising content, and are looking for more input from specialist librarians with knowledge of the material as well as the research community which might make use of it. This mirrors the challenges for every library moving from collection based librarianship towards more proactive service based librarianship. The medium may have changed, but the message remains the same; libraries were always more than collections of books on shelves, just as databases of electronic information do not in themselves make for research resources. Their value in both instances comes from the expertise of library staff and their ability to work with both the materials and with the researchers.

### **Intellectual Property Rights**

The global intellectual property rights regime is constantly under pressure to extend duration, reduce fair dealing, protect databases containing facts and public domain information, and generally subsume published knowledge under the same regime as entertainment media. Copyright is often 'seen more as an instrument of ... trade policy rather than a means to protect authors and stimulate creativity' (Oakley 2003, 1). The commoditisation of information and knowledge and its effect on libraries and other cultural and educational services are regulated under the World Trade Organization<sup>30</sup> (in particular under the General Agreement on Trade in Services and the Agreement on

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<sup>29</sup> See chapter 10, 'The Free Access to Law Movement' by Graham Greenleaf at \_\_\_\_.

<sup>30</sup> <<http://www.wto.org/>>, accessed 27 September 2010.

Trade Related Aspects of Intellectual Property Rights (TRIPS) is discussed in Ritowski (2005). Colin Darch described the situation and its impact on some countries around the world at the Conference of the International Association of Libraries in Cape Town in 2003 (Darch 2004); he builds on that paper in his contribution to this book.<sup>31</sup>

The countertrend has been the introduction of the development agenda at the World Intellectual Property Organisation (WIPO)<sup>32</sup>. The Preamble to the WIPO Copyright Treaty of 1996<sup>33</sup> expresses the need to maintain a balance between rights of authors and the larger public interest. The Geneva Declaration on the Future of WIPO,<sup>34</sup> signed by many individuals and organisations including the American Association of Law Libraries, the International Association of Law Libraries and the International Federation of Library Associations, asserts that the balance has been distorted by restrictive intellectual property rules which negatively affect education, research and development especially in developing countries.

The public law governing intellectual property rights may not be satisfactory for information consumers or their representatives: librarians and information managers, but information use is increasingly governed by private law since most electronic resources are licensed by the copyright owner rather than sold. The control of licences and permissions is a major challenge to librarians since the conditions and extent of use of electronic materials vary widely for each publisher and possibly for each package of materials or each individual deal negotiated. There is a significant need for international efforts to standardise and simplify such licenses and reduce the amount of effort expended on behalf of both licensors and licensees in understanding, managing and implementing the terms of licenses. Publishers themselves often seem to have little experience or expertise in drawing up licenses and neglect to obtain proper advice in framing them. Their licenses would not often meet the tests of plain language, (admittedly much legislation falls into the same category). There is also a crying need for a solution for licensing little used research material where institutional licenses

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<sup>31</sup> Chapter 6, 'Ideology, Illusion and the Global Copyright Regime' by Colin Darch.

<sup>32</sup> <<http://www.wipo.int/portal/index.html.en>>, accessed 27 September 2010.>.

<sup>33</sup> <[http://www.wipo.int/treaties/en/ip/wct/trtdocs\\_wo033.html](http://www.wipo.int/treaties/en/ip/wct/trtdocs_wo033.html)>, accessed 29 June 2010.

<sup>34</sup> <[www.futureofwipo.org/](http://www.futureofwipo.org/)> and the IFLA statement at <[www.ifla.org/III/clm/CLM-GenevaDeclaration2004.html](http://www.ifla.org/III/clm/CLM-GenevaDeclaration2004.html)>, accessed on 29 June 2010.

which assume large scale use are not appropriate.

### **The Politics of Law Librarianship**

Decisions on legal issues affecting libraries are often taken at regional or international levels as well at the national level without the implications for libraries being fully recognised and consultation taking place. The library world has an organisation, the International Federation of Library Associations and Institutions (IFLA), to represent its interests at an international level although as a body it shares the same challenges as other international bodies in coming to a consensus on any policy issue. However, lobbying and formal responses to consultation increasingly need to be carried out on an international basis (Oakley 2003). The International Association of Law Libraries has collaborated with IFLA for many years and recently, with the American Association of Law Libraries, sponsored the formation of a Section of Law Libraries within IFLA.<sup>35</sup> It is to be hoped that IALL together with the Section on Law Libraries in IFLA can play an increasingly important role in international policy.<sup>36</sup>

A model for the successful involvement of the profession of law librarianship in guiding and putting relevant information before legislators in the context of a government relations and lobbying programme is the Washington Office of the American Association of Law Libraries. AALL has a strong agenda in the public policy arena and overseas members can admire its participation in advocacy, lobbying and policy-making at regional and national level. This demonstrates how important leadership of professional associations can be in channelling and directing informed opinion when issues of regulation and compliance are being framed.

The Washington Government Relations Office of the AALL has been involved in a range of information policy issues with their root in access to legal information, which ultimately relates to access to justice and civil liberties. Issues and policy areas include intellectual property rights and fair use in the digital environment, data protection, privacy and freedom of information, freedom of expression, funding of libraries

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<sup>35</sup> <<http://archive.ifla.org/VII/s48/index.htm>>, accessed 29 June 2010.

<sup>36</sup> The sections on 'Law Librarianship around the World' in chapter 8 identify policy issues affecting law librarianship and it is intended that they will form the first part of an extensive survey. Chapter 16 identifies various issues which require research to provide evidence supporting policy initiatives.

(especially the Law Library of Congress which is effectively the national law library in the USA), provision by government of information and official publication programmes, and the nature and strategy of electronic information provision by government and the courts. AALL has been particularly effective in setting the agenda for government publications in the digital age, drawing up statements of best practices and criteria for evaluating the authenticity, reliability, integrity, accessibility and persistence of government digital publications, and management of the life cycle of online government information.<sup>37</sup>

The AALL Government Relations Office<sup>38</sup> not only works on information policy issues, and mounts and coordinates advocacy efforts for AALL, but it keeps AALL's over 5,000 members informed and briefed about current and upcoming policy issues through blogs, briefs and other communications on issues, government procedures, and members of government,. The Office also educates AALL members in advocacy techniques and provides toolkits and other resources, encouraging them to act as change agents in influencing public policy. Although few, if any, other organisations representing law librarians or even general library associations can provide such resources, and some information is very specific to the USA, there is much that may be of use to law librarians in other countries.

### **International Networking<sup>39</sup>**

Professionals form communities of practice to share knowledge and skills through personal contacts and through the formation of professional bodies

*We shall not cease from exploration  
And the end of all our exploration  
Will be to arrive where we started  
And know the place for the first time<sup>40</sup>*

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<sup>37</sup> See the work of the Electronic Legal Information Access and Citation Committee of AALL at <<http://www.aallnet.org/committee/eliac/>> and its predecessor committee, the Access to Legal Information Committee at <<http://www.aallnet.org/committee/aelic/>>, both accessed 29 June 2010 and the discussion in chapter # by Claire Germain.

<sup>38</sup> <<http://www.aallnet.org/aallwash/>> accessed 29 June 2010.

<sup>39</sup> This section is based on Winterton (2004) whose title is from another line by T S Eliot: 'In order to arrive at what you do not know you must go by a way which is the way of ignorance', *East Coker* III, 40

<sup>40</sup> T S Eliot. *Little Gidding* V, 26-29.

The lines above from one of Eliot's *Four Quartets* provide one of the best explanations and justifications for international networking. Networking and conference attendance in particular often give an insight into other approaches to law librarianship, perhaps the philosophical underpinnings of our profession, perhaps a good solution to a particular problem, a new way of expressing one's aspirations or a simple new procedure. Beyond the specifics, you get the opportunity to look at your own library services with new eyes, a new sense of perspective that helps to clarify priorities and perhaps unsettles your sense of satisfaction with the status quo. Networking is an essential and enjoyable part of a professional job, and the opportunities and benefits of international networking have increased with globalization and the larger environments of legal information in which we work.

The process of learning each other's roles and realities which takes place in an international dimension may take a greater intellectual leap than at regional and national conferences because you may have less in common with other delegates, but there is more to learn for the same reason. The process of international networking can also often offer an opportunity to contribute. There may be a chance to set up a publications exchange programme or internship, to volunteer some time or effort. However, anyone who has been involved in programmes of assistance, consultancy or voluntary work knows that the teacher rapidly becomes the student. The two-way nature of the process of learning is extremely important; the benefits are reciprocal.

One of the interests and challenges of law librarianship has always been that each country has a different legal system and a different system of legal publications, indeed each country may well have multiple jurisdictions. The legal systems may belong to larger families of legal systems and they may have influenced each other, but they remain an expression of the culture and identity of a jurisdiction. Globalization has changed but not reduced the complexity. The demand for access to legal information from these jurisdictions has increased.

As law librarians, we increasingly need to be aware of foreign and international legal systems, to understand the sources of law, and to have recourse to expertise beyond our local resources. International contacts not only broaden our horizons and make us aware of other legal systems and responsive to enquiries about them; they also provide back-up for materials, language skills and expertise. Many of us are thankful for

our international contacts at the end of a phone or an email. Discussion lists provide much needed expertise, although the cost-effectiveness of numerous people helpfully going off to do the same thing may be questioned. The right contact for the right problem is often a much better answer.

The Directors of the Library of the Institute of Advanced Legal Studies (IALS) in London were all internationalists. Muriel Anderson was given leave of absence for an extended period to assist in setting up the Library of the Nigerian Institute of Advanced Legal Studies in Lagos. In the process she forged an enduring link between the two institutions which is mirrored in the growing relationship between the IALS and the new Ghana Institute of Advanced Legal Studies. The late Willi Steiner, who was for many years editor of the *Index to Foreign Legal Periodicals*, was one of a generation of émigrés from continental Europe who enriched legal scholarship and law librarianship in the common law world. As we lose that generation, it becomes increasingly important to cultivate a new cadre of foreign, comparative and international law librarians with an understanding of foreign legal systems, a need expressed in the strategic plans of the AALL. K Howard Drake, the first Librarian of the Institute, was a figure of international standing in law librarianship and was one of the moving forces behind the creation of the International Association of Law Libraries of which he was President at the time of his early death.

One of the watchwords of modern librarianship is collaboration. We know we need each other. Take the example of digitization of materials discussed above. We need to collaborate by utilizing international standards for data formats, for electronic manipulation of metadata, and metadata content. We need to collaborate in order to make the most efficient use of available funds for digitization projects and ensure that no material is digitized twice, that no project unnecessarily duplicates the efforts of another. Such collaboration is important not just locally and nationally but internationally.

There are aspects of globalization that can give us cause for optimism. As standards become global rather than regional, there are more opportunities to learn from each other and share experience. It is always reassuring to discover that we face similar challenges, serve researchers with similar motivations and needs, and encounter similar problems. It is also extremely helpful to know we are using increasingly similar data

formats, are able to employ similar strategies and utilize similar bibliographic utilities, communicate with each other's systems, and indeed often use the same automated systems.

International networking can start at home and, of course, it can be virtual. You can participate through lists and discussion groups, membership in other associations, reading their publications, and building up contacts by email. There are associations of law librarians and law libraries around the world from South Africa to the Nordic countries, from Britain and Ireland to New Zealand. There is also a wide range of discussion lists with a focus on foreign and international law and legal information. The organizations<sup>41</sup> and the discussion lists can be found on the Internet.

Meeting people in person is important. Many initiatives and collaborative projects rely on coordination of efforts, which ultimately relies on contacts between a relatively few people and meetings between individuals. If you find that you are increasingly dealing with foreign law enquiries, consider a trip to meet your international colleagues. There are various professional events dedicated to law librarianship and there is an international calendar of such events on the IALL website,<sup>42</sup> which also appears in the *International Journal of Legal Information*.

Perhaps the quintessential example of international networking for law librarians is the International Association of Law Libraries (IALL). IALL is a worldwide organization of librarians, libraries, and others concerned with the acquisition and use of legal information emanating from sources other than their own jurisdictions. IALL has been dedicated since its foundation in 1959 to bringing together and facilitating the work of law librarians who use foreign and international legal resources. It publishes the *International Journal of Legal Information*, holds an annual course in international legal information and law, and maintains a scholarship programme of conference and internship grants which is not limited to association members.<sup>43</sup>

The IALL conference in 2003 was at the University of Cape Town, South Africa,

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<sup>41</sup> IALL list of law library associations and related organizations at <<http://iall.org/partners-other.html>>, accessed 29 June 2010.

<sup>42</sup> <<http://iall.org/calendar/newcal/show.asp>>, accessed 29 June 2010.

<sup>43</sup> See <<http://iall.org/scholarship.html>> and <<http://iall.org/internship.html>>, accessed 16 September 2010 and the Appendix top this book for further details.

and attracted law librarians from about twenty-five countries. It dealt with the transformation of the legal system in South Africa and we heard from speakers including judges from the Constitutional Court and the Cape High Court, members of the Truth and Reconciliation Commission, the Gender Commission, and the Treatment Action Campaign, from people who helped to write the new Constitution and people responsible for interpreting it. We also stood within the former Maximum Security Prison on Robben Island, now a museum, and listened to Dr. Ahmed Kathrada, the Chairperson of the Museum Council and a former member of the government who spent 18 years as a political prisoner within those walls. Perhaps you can never really know about those experiences which are so fundamental to the understanding of law but you can get a little closer by being there and listening. International networking can take you to places where you would not otherwise go.

Each of the national and regional associations also has a meeting. The AALL annual meeting provides opportunities to attend sessions on foreign, comparative and international themes, often sponsored by the Foreign, Comparative & International Law (FCIL) Special Interest Section. The FCIL SIS administers the Schaffer Grant for Foreign Law Librarians to provide financial assistance to ensure the presence and participation of a foreign law librarian at the AALL annual meeting and to enrich the event by sharing global perspective.<sup>44</sup> The American, Australian, British and Irish, and Canadian associations have each hosted joint study institutes to cultivate interchange and give an opportunity to learn about the legal system, heritage and traditions of the host countries.

The World Congress of the International Federation of Library Associations and Institutions (IFLA) is a massive meeting and not one which concentrates on law librarianship. There are one or two sessions each year to bring law library matters to the attention of a wider audience of librarians in different sectors, traditionally arranged by the IALL and more recently by the Section of Law Libraries originally formed through the sponsorship of the IALL and AALL. IFLA also plays a role in international policy issues, such as intellectual property and international trade, which now impinge on all libraries. This is international networking at a strategic level and may offer us all a

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<sup>44</sup> The terms of the Schaffer Grant and applications forms are at  
<<http://www.aallnet.org/sis/fcilsis/grants.html>>, accessed 16 September 2010.



stronger voice in advocacy at an international level.

An extended visit to a library in another country provides a potentially much more valuable immersive experience than a conference and experience. The FCIL SIS has an Internships and International Exchanges Committee which channels information to law librarians interested in opportunities to visit libraries abroad.<sup>45</sup>

Several years ago the Institute of Advanced Legal Studies, University of London, created a Visiting Fellowship in Law Librarianship as part of its academic research programme.<sup>46</sup> Although the fellowship provides no funding, it provides a powerful argument to a librarian's employer for paid leave. It is designed to place an experienced law librarian in a research and research library environment and encourage research of mutual benefit to the Visiting Fellow and the Institute Library. Visiting Fellows have come from the Squire Law Library of the University of Cambridge, the Law Courts Library in Sydney, the Diana M Priestly Law Library at the University of Victoria in British Columbia, Harvard Law School Library, the Nigerian Institute of Advanced Legal Studies Library, Yale Law School Library, Los Angeles County Law Library, the Law Library of the University of Bergen in Norway, the Honourable Judges' Library of the Bombay High Court, Wichita State University Libraries and the Alaska State Court Law Library. This has proved a flexible and exceptionally rewarding programme and might be combined for example with an IALL internship grant.

All the new roles for law librarians and legal information managers mentioned in this chapter require new skills and real budgets for staff development. But, despite the costs, law librarians need to understand foreign and international legal systems and their sources of law, and to have recourse to expertise beyond their local resources.

International contacts broaden horizons and provide valuable contacts for materials, language, expertise, and partners for projects. Our motto should be: travel safely but not too wisely, we do not know all the answers!

### **Future of Law Libraries and Law Librarianship**

The opportunities for new roles for law librarians: as managers, teachers, publishers lobbyists while remaining librarians have been explored in various articles over the past

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<sup>45</sup> <<http://www.aallnet.org/sis/fcilsis/internships.html>>, accessed 16 September 2010.

<sup>46</sup> <<http://www.ials.sas.ac.uk/fellows/fellapp.htm>>, accessed 16 September 2010.

decade (Danner 1998; American Association of Law Libraries 2000; Winterton 2006, 36-39).<sup>47</sup> Possibly the best source for a community view of the future of law libraries and law librarians is a work which is dated but was drawn up after wide consultation among the profession in the USA, *Beyond the Boundaries* (American Association of Law Libraries 2002).

It is interesting to compare the view of the future expressed in this report with the descriptions of law libraries and law librarianship which have been drawn up by law librarians from various countries around the world who have received grants to attend the conference of the International Association of Law Libraries over the past decade.<sup>48</sup> Their description of the state of the profession and the law libraries in its care in their countries shows how much work we all have to do to achieve our vision and how much research and development there is still to do in support of the vision and its achievement around the world.

If the impact of digital technology is mutating traditional models of communication, it is also mutating models of information management. This goes far beyond questions of collection development and format of material to be acquired, or what particular nature of hybrid library to adopt at a particular time. It involves a redefinition of the role of law librarian (Danner 1998; Susskind 1999).

The new model of communication offers librarians various roles in capturing, organising, describing, indexing (implying a rediscovery of the importance of metadata and selection), and preserving information, as well as in sharing intellectual content and opportunities in the sophisticated management of resources, aspects of publishing information, retrieving and packaging information for research, and education and training, using traditional skills of information management and the flair for collaboration which has been their trademark.

In general the management of an increasingly broad range of information at more times in its life and more points in the chain of communication is likely to reinforce the role of law librarians as intermediaries. The impacts of technology and globalisation in

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<sup>47</sup> See also Chapter 1 'Defining International Law Librarianship in an Age of Multiplicity, Knowledge, and Open Access to Law' by Richard A Danner and Chapter 3 'The Education and Training of Law Librarians' by Penny A Hazelton.

<sup>48</sup> See Chapter 8, 'Law Librarianship around the World'.

its broadest sense are changing the roles of librarians as surely as they are changing the role of lawyers (see Susskind 2010a, 2010b; Cannan 2007). The physical role of law libraries and the human role of law librarians are likely to remain important elements in the process of legal education and legal research:

The virtual law library offers many opportunities and challenges and we will each see our world changing to take advantage of these. Librarians can cement their roles in the virtual library by ensuring that the clients never forget that the human component is integral to any library, virtual or physical. (Whelan 2001, 22).

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