

Towards “open lawyering” – revisiting *The Future of Law*

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Outline

- Introduction
- Susskind's "shift in paradigm"
 - 12 predictions from *The Future of Law*
 - Degrees of realisation
- Personal predictions for 2025
- Conclusion

Tomorrow's legal paradigm - 1

- From “advisory service” to “information service”
 - “The ultimate deliverable will be reusable legal guidance and information services pitched at a level of generality considerably higher than the focussed advice which characterizes legal advisory work of [1996]”

- From “one-to-one” to “one-to-many”
 - “The legal information will be reusable and for that purpose cast in a form well suited to repeated consultation. It will be applicable in many circumstances and for many different users”

Tomorrow's legal paradigm - 2

- From “reactive service” to “proactive service”
 - “Once it becomes practicable and financially viable for non-lawyers quickly to obtain usable legal guidance, earlier legal input in the life cycles of transactions and disputes will become commonplace.”

- From “time-based billing” to “commodity pricing”
 - “Gradually, access to legal service packaged as information service will sell in high volumes for mass consumption at low prices.”

Tomorrow's legal paradigm - 3

- From “restrictive” to “empowering”
 - “With the demystification of the law and its far wider availability will come the perception that the law does far more than set up obstacles... Users of legal information services will gradually appreciate that the law can be a source of empowerment and a powerful weapon which can be marshalled in support of the exploitation of opportunities and the attainment of all manner of objectives.”
- From “defensive” to “pragmatic”
 - “By their very nature, legal information services are pitched at a higher level of generality than legal advice. And so, while it may be reasonable for users to rely on the guidance offered, we have to accept that on those (rare) occasions where the guidance is inappropriate and gives rise to problems, the pragmatic social compromise will be not to attach liability to the developers other than in exceptional circumstances.”

Tomorrow's legal paradigm - 4

- From “legal focus” to “business focus”
 - “The successful information services of the future will be those that provide legal guidance which is packaged and integrated with more general commercial assistance.”

- From “legal problem solving” to “legal risk management”
 - “While legal problem solving will not be eliminated in tomorrow's legal paradigm, it will nonetheless diminish markedly in significance. The emphasis will shift towards legal risk management supported by the proactive facilities which will be available in the form of legal information services and products.”

Tomorrow's legal paradigm - 5

- From “dispute resolution” to “dispute pre-emption”
 - “The effective control of legal risks prior to their escalation and realisation as problems will mean that disputes will be pre-empted and avoided.”

- From “publication of law” to “promulgation of law”
 - “All primary and secondary legislative sources... will be placed, as a matter of course, on the Internet or its successor.”

 - “To help guide lawyers and non-lawyers through this far larger, projected mass of legal sources, a major legal information services industry will spring up. These providers will develop systems, products, front ends, filters and agents, using a wide range of enabling techniques, which will take the user to all but only the relevant sources relevant to her purpose.” [*Sic*]

Tomorrow's legal paradigm - 6

- From “dedicated legal profession” to “legal specialists and information engineers”
 - “For problems of great complexity or high value, legal specialists will continue to operate in their traditional advisory role. But they will represent a relatively small fraction of the legal profession of tomorrow. A far larger number of lawyers will have reoriented their careers and will become the legal information engineers whose knowledge forms the basis of legal information services.”
- From “print-based” to “IT-based” legal systems
 - “Legal systems of the information society will evolve rapidly under the considerable influence of ever more powerful information technologies. We will no longer suffer from the excessive quantity and complexity of legal material.”

Degrees of realisation - 1

- Some aspects of the paradigm shift have clearly been realised...
 - “Reactive” to “proactive”
 - “Legal focus” to “business focus”
 - “Legal problem solving” to “legal risk management”
 - “Dispute resolution” to “dispute pre-emption”
- Every law firm claims to advise in this way
- Has the shift come about because of IT, or just client demand?

Degrees of realisation - 2

- Some aspects of the paradigm shift have been partly realised...
 - “Advisory service” to “information service”
 - “One-to-one” to “one-to-many”
 - “Publication” to “promulgation”
 - “Dedicated profession” to “legal specialists and information engineers”
- And some have hardly been realised at all
 - “Restrictive” to “empowering”
 - “Time-based billing” to “commodity pricing”
 - “Print-based” to “IT-based”

Degrees of realisation - 3

- Legal information services are widely available to those who want them
 - Specialist legal information services (e.g. PLC, LexisNexis, Sweet & Maxwell)
 - Law firm offerings (e.g. Out-Law.com, Law-Now)
 - Central and local government information (e.g. direct.gov.uk, europa.eu, ico.gov.uk, tradingstandards.gov.uk)
 - Consumer services (e.g. whichlegalservice.co.uk)
- But the information quality, currency and usability are variable...
- And not everyone wants to read it

Degrees of realisation - 4

- Legal information services do not replace the “super-lawyer”
 - The trusted business partner
 - The reassuring mentor and simplifier
 - The skilled draftsman
 - The experienced and pragmatic negotiator
 - The effective networker

- Legal information services and ICT do facilitate legal practice
 - Particularly small or specialist practices

Personal predictions for 2025 - 1

- More legal information service providers entering the market
 - Greater “openness” in terms of access to law and advice
 - Need for simplification and rationalisation of public resources
 - People will still read books and write on paper – “tactility”

- More boutique practices capable of competing with the big firms
 - Lower overheads reflected in lower rates
 - Quality of legal advice taken for granted - emphasis on soft skills and personal relationships
 - The “bazaar” recognised as a valid alternative to the “cathedral”

Personal predictions for 2025 - 2

- More quasi-legal advisers (e.g. BPO consultants) taking on drafting and negotiating roles
 - Leveraging legal information services
- More standardisation of routine legal work
 - Offshoring or automation to reduce costs
 - Streamlining of advice for repeat clients
 - Productivity tools increasingly make large teams superfluous
 - The age of the “super-lawyer” (*Law Society Gazette*, 20 May 2010)

Conclusion - the trouble with predictions...

- This “telephone” has too many shortcomings to be seriously considered as a means of communication - *Western Union internal memo, 1876*
- Gentlemen, Mr Bell's telephone is a wonderful invention. I can see a day coming when there shall be one in every town - *Mayor of Chicago to the press, upon being shown Bell's telephone*
- People will soon get tired of staring at a plywood box every night – *D.F. Zanuck, Head of 20th Century Fox, 1946*
- Computers in the future may weigh no more than 1.5 tons – *Popular Mechanics, 1949*
- There is no reason for any individual to have a computer in their home – *Ken Olsen, President of DEC, 1977*
- 640K ought to be enough for anybody – *Bill Gates, 1981*

Any questions?

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