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**Electronic Publication of the Norms: From a monopoly to universal information service.
The Swiss and French experiences.**

Author: Christine Poupa

Idheap (The Institute for Advanced Studies in Public Administration)

Switzerland

Tél. +41 (0)71 333 23 23 Christine.Poupa@comunicon.ch

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Abstract

This paper discusses the process and issues of the electronic publication of legal information in Switzerland and France.

Initially, as in many other countries, electronic publication of legal information was outsourced by the government administration and exclusive rights were entrusted to a private company for their publication. The sole provider monopoly situation began to be questioned when the relevant technology became more accessible. The paper discusses how, in Switzerland and in France, the effects of this technological challenge impacted on the definition of basic information services and on the cost of the service for the end user.

Extended Abstract

This paper presents the current situation concerning electronic publication of legal information in Switzerland. In December 1996, the electronic publication on the Internet of decisions of the Swiss Federal Supreme Court was entrusted to Eurospider, a private company. An association, 'Association Banque Suisse de Données Juridiques (ABSDJ)¹' had been the forerunner in this field. They had earlier, in spring 1986, also created a private company Swisslex (Banque Suisse de Données Juridiques SA), whose capital was mostly held by Swiss legal publishing houses.

The Federal Chancellery and the Federal Department of Justice and Police are now proposing a new method for the dissemination of legal information. This new strategy of electronic publication of legal information was launched by the publication of Order RS 170.512.2² dated 8th April 1998. Taking effect from the 1st July 1998, this order is only applicable to legal information concerning rulings emanating from government departments.

The electronic databases of legal information have become simple tools to use and are accessible to everyone thanks to the Internet. Is the retention of a monopoly granted 10 years or 20 years ago, because of the investments necessary at that time, still justifiable? How could it now be structured and how should it be financed? A comparison between the situation in Switzerland and France allows the pitfalls encountered during the process of rescinding the monopoly to be understood. The termination of the monopoly situation had the general approval of end users. The cost of the information services paid for by the end user varies depending on the service. These are free when offered by the government but the cost of information can be quite expensive when offered by a private company, but even then the private supplier is not in a position to make immediate profits.

¹ During a general meeting (13 november 1998), the ABSDJ became 'Association Suisse pour le développement de l'informatique juridique' (ASDIJ).

² http://www.admin.ch/ch/f/rs/c170_512_2.html

Electronic Publication of the Norms : From a monopoly to universal information service. The Swiss and French experiences.

The electronic databases of legal information have been available to the public for the last 15-20 years in different European countries on a fee paying basis. In France, for example, these services were supplied via the Minitel by a company called “l’Européenne de Données”. The original justification for a monopoly (a state monopoly or a monopoly granted to a private company) was that the tools were expensive and sophisticated, targeted at the legal professional. Now the electronic databases of legal information have become simple tools to use and are accessible to everyone thanks to the Internet. In these circumstances, is the retention of a monopoly justifiable? Does the monopoly still exist? How can it be structured and how financed? Do the exclusive agents, private companies, still have a future?

This paper presents, in some detail, the evolution of the situation in Switzerland from the 1980s, with the creation of Swisslex, to the end of 1999, after the monopoly situation was abandoned. A comparison with the French situation demonstrates that the ending of a monopoly, even if favoured by end users, is not realised easily.

1- The experience in Switzerland.

From a procedural point of view the Swiss Federal Supreme Court has a unique and particular position. The Swiss cantons have remained, to a large extent, sovereign entities. Consequently there are 26 legal organisational systems and 26 different legislative codes which deviate sometimes considerably, on important points of law, as a consequence of the legal precedents from which they are derived. The paths that litigants must follow to have their case heard in the Swiss Federal Supreme Court can be very different depending on the procedure and court for the specific canton. The dissemination of legal information is consequently of fundamental importance in Switzerland. The Swiss Confederation has shown its concern for this problem.

1.1 Swisslex, the original leader in the provision of on line legal information services in Europe

On the 10th December 1984, the Swiss Government decided to become a member of the Association Banque Suisse de Données Juridiques (ABSDJ). The association was founded in January 1985 at the instigation of the Fédération Suisse des Avocats (FSA) et de la Société Suisse des Juristes (SSJ). These two bodies and the Confederation constituted the association supported by the Federal Department of justice. The ABSDJ now regroups all the Swiss cantons (with the exception of Bâle-Ville and the Jura), the Institut du Fédéralisme with offices in Fribourg and many other organisations and individuals. The Swiss Federal Supreme Court has a permanent observer delegated to the committee. The efforts of the ABSDJ resulted in spring 1986 in the foundation of Swisslex (Banque Suisse de Données Juridiques SA), a private company, in which the ABSDJ has a token participation and the Swiss Confederation does not participate at all. The share capital of Swisslex was then mostly held by the Swiss legal publishing houses. The Confederation treated Swisslex as a private partner for the setting up and implementation of the Swiss database of legal information and defends its interests with respect to Swisslex through the channel of the ABSDJ.

Swisslex obtained an exclusive contract to exploit the electronic database of legal information from the Confederation. At the time, the costs of making the information available was such that the commercial viability of this database could only be assured with high access costs and a monopoly situation. In 1987, the first 'on line' database of legal information was inaugurated. It was a mainframe solution, the customers accessing the mainframe database with standard telephone connections

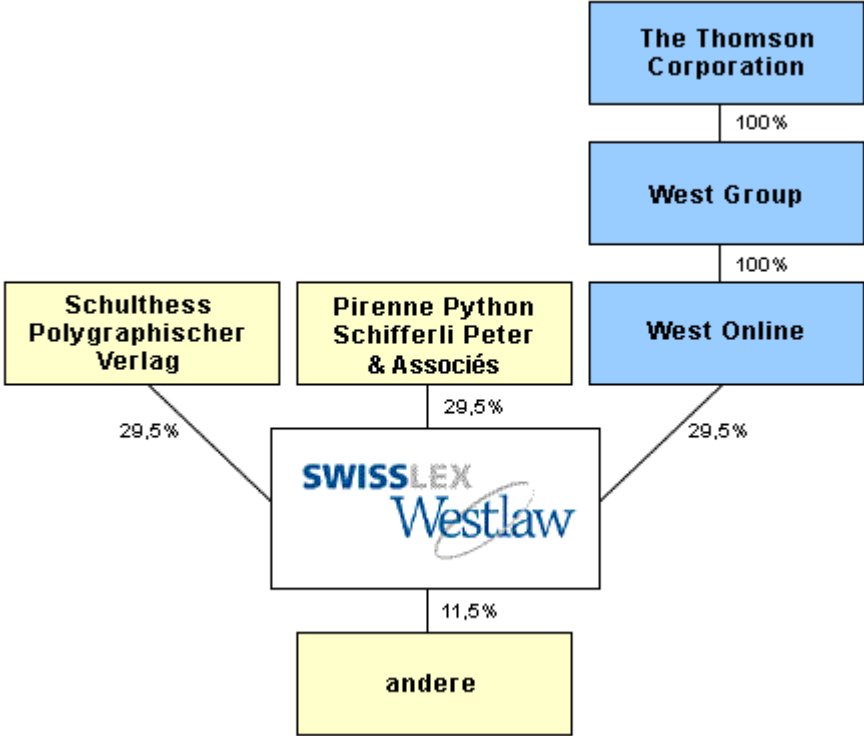
Since 1995, Swisslex sells a CD-ROM containing the judgements of the Swiss Federal Supreme Court (ATF: Arrêts du Tribunal Fédéral), for 1'450 CHF (+ 7, 5 % VAT) and 850 CHF for the two annual updates of the data. But Swisslex has some competition coming from its own camp, competition from the specialist legal publishers. Certain cantons sub-contract the electronic publication of their legislation to specialist publishers. These publishers also publish legal commentary on the legislation on CD-ROM. For example the Tessin was the first Swiss canton to publish, in May 1996, a CD-ROM with the collaboration of a company called Archilex.

This CD-ROM contains the texts of all the legislation of the Swiss Confederation, in Italian, as well as the legislation and the legal procedures of the Tessin, the regulations for the individual communal councils of the Tessin, the jurisprudence, the financial legislation and the social insurance regulations, etc... The CD-ROM is sold by subscription to several hundred people (250 CHF for 3 CD-ROMs per year. The updates are made every 4 months). Other cantons, like Geneva, are following the same line.

From January 1997, the Swisslex databases are offered on the Internet, but this still involves a monthly subscription. The fee is dependent on the number of lawyers in the practice or in the legal department of government and on a transaction charge for information accessed. For example a 180 CHF subscription is charged each month for a two-lawyer office.

The capital structure of Swisslex has radically changed over the years to meet the challenge of the new technological and financial constraints. In spring 1998, Westlaw-Europe took a financial stake in Swisslex. Westlaw-Europe is a company in the Thomson Corporation grouping, the American market leader in the field of legal and economic data banks and information services.

(source of information : <http://www.Swisslex.ch/french/faits.htm>)



In the box « andere » (« other » in German) are grouped the minority shareholders, mostly Swiss publishing houses: Edipresse Publications SA, Lausanne ; Stämpfli Verlag AG, Berne ; Helbing und Lichtenhahn Verlag AG, Bâle ; Verein Schweizerische Juristische Datenbank, Fribourg ; National Zeitung & Basler Nachrichten AG, Bâle ; Sauerländer AG, Aarau.

Swisslex-Westlaw³ now has an ‘on line’ database service covering all the legal judgements handed down by the Swiss Federal Supreme Court. As well as the judgements handed down by various courts in the principal cantons, the more important specialist periodicals, the legal extracts, commentary and monographs in the civil and banking legislative domains. These texts are generally images of whole text documents.

The basic subscription to Swisslex-Westlaw includes the Federal legislation and judgements (the transcripts of the Supreme Court will be available from the end of 1999). The database also includes the judgements handed down in the larger cantons and the periodicals with a large circulation. Supplementary subscriptions are necessary to access periodicals, judgements and commentary relevant to other legal domains (civil law, banking law, law on competition, intellectual property rights and financial legislation....).

1.2 The evolution of the position of the Swiss Confederation : the suppression of the monopoly of Swisslex

In January 1997, the Swiss Federal Government acted on a report “A study of a new approach for the distribution and retrieval of legal information using electronic means.”⁴, and decided that the legislation must be made available, free of charge, on Internet⁵. Approximately 200 legal documents have been distributed by the Confederation on the Internet: these refer mostly to public law but include legislation covering social insurance. Since March 1998, it has been possible to consult the whole of Swiss Internal Law in PDF format (Acrobat Reader, a freeware program, allows anybody to read this text.). This data is available for personal private use only and cannot be redistributed for commercial gain.

³ <http://www.Swisslex.ch/french/welcome.htm>

⁴ “Etude d'une conception fédérale pour la diffusion et la consultation du droit par voie informatique”, report dated september 1996 : <http://www.admin.ch/bj/rechtinf/rik0297/ri-konzf.pdf>

⁵ Recueil systématique du droit fédéral (RS) : <http://www.admin.ch/ch/f/rs/rs.html>

Some supporting tools had also been made available on the Internet, such as Jurivoc⁶, a legal thesaurus of the Swiss Federal Supreme Court and of the Federal Insurance Court. This thesaurus was developed in collaboration with the Swiss legal libraries. Jurivoc is targeting to index the principal sources of the law. This project was launched at the beginning of the 1990s with the objective of integrating and normalising the indexation vocabulary used in the different databases of legal information. The Jurivoc application, developed in Java, is available free of charge since November 1998 on the internet site of the Swiss Federal Supreme Court. The Jurivoc thesaurus contains roughly 8,000 descriptors and 10,000 non-descriptors (synonyms, quasi-synonyms and antonyms in certain cases) for each of the official languages⁷ (currently French, German, soon Italian and eventually English). The descriptors which are at the roots of the hierarchies have been chosen to be as closely related as possible to structure of the Federal legislation, a structure well understood by the Swiss legal profession.

Other legal information such as ‘la Jurisprudence des Autorités Administratives de la Confédération’ (JAAC), the interpretations of federal law codes, statutes and regulations, have also published and available from the Confederation on the Internet since the end of 1999.

The following text is reproduced because it is the most relevant section of a statement made by the Federal Chancellery and the Federal Department of Justice and Police to the Swiss Federal Government proposing a new policy for the dissemination of legal information. (This published statement, dated Feb.1997, is available on the Internet⁸):

“The authors propose a clear distribution of tasks between the State and the private sector for the electronic publication of legal information.... In practice the information disseminated covers mostly the legislation (Constitution, laws, regulations, international law) and the Federal codified law which should be made available to the public in all the official languages. All other legal information held electronically (doctrine, legal commentary, law manuals etc.) should on the other hand be available on the market. The Confederation should however make available to private enterprise .. the electronically held legal information of which it disposes.”

⁶ <http://www.bger.ch/jurivoc/f>

⁷ The languages used in the written judgements of the Swiss Federal Supreme Court were distributed in the following way in 1998: German 58.8%, French 31.8%, Italian 9.5%

⁸ <http://www.admin.ch/cp/f/1997Feb21.173437.7348@idz.bfi.admin.ch.html>

This government stance is quite understandable because of the pressure and requests for clarification to government. The pressure is coming both from the publishers, wanting to enter the market and from the Swisslex company, anxious to preserve its position in face of competition from the publishers and maintaining its favoured status with respect to the Confederation. In fact, since the eighties and up to 1998, Swisslex held by contract a monopoly on the use and commercialisation of the legal information from the Confederation.

The Federal Order, covering the electronic publication of legal information, RS 170.512.2⁹ dated 8th April 1998, taking effect from 1st July 1998, is set to clarify the situation. The order only applies to the category of legal data that refers to regulations that are generally applicable to the publication of the data from public sector. The legal commentary¹⁰ referring to the order specifies that “ the Federal Parliament and the courts will not be regulated by this order. However, it is appropriate that these two bodies do not take a diametrically opposed line of action, so that the Federal authorities promote a uniform policy in the domain of the dissemination of legal information”.

Today the scene is changing. All the publishing houses can buy their legal information from the Confederation. For example, the collection of laws, in the three official languages (German, French, Italian) can be purchased on request according to the new June 1999 prices¹¹ for 3'000 CHF (plus 300 CHF for quarterly updates). The information is supplied in Word or HTML formats. The original charge was approximately 100'000 CHF (about 35'000 CHF for each language). A blossoming of products and services for the dissemination of legal information has taken place in Switzerland. This has led to a problem of the identification of the various sources of legal information.

The Order RS 170.512.2 (art. 10) suggested the creation of a co-ordinating body, under the auspices of the Federal Chancellery, to be in charge, mainly, of the inventory, data recording, indexing and then publishing of both the private and public sources of electronic legal information in Switzerland. This body named ‘COPIUR’¹² (a service for the co-ordination of the electronic publication of legal information) began its work on the 1st October 1998.

⁹ http://www.admin.ch/ch/f/rs/c170_512_2.html

¹⁰ <http://www.admin.ch/bj/rechtinf/ris-vo/ris-vo-erl-f.pdf>

¹¹ ‘Ordonnance de la Chancellerie fédérale concernant les taxes de transmission de données juridiques’ (RS 172.041.12, 24 June 1999, p. 1699)

<http://www.admin.ch/ch/f/as/1999/1699.pdf>

¹² Chancellerie fédérale, COPIUR (Service de coordination des publications électroniques de données juridiques), Tel +41 (0)31 323 56 80 bernard.ayer@bk.admin.ch

An Internet site is already planned to disseminate this information¹³. This Internet site will be active in 2000. In the meantime, the COPIUR office publishes and distributes, free, a quarterly information bulletin to about 2'000 subscribers.

2- Comparison with the situation in France

2.1 A monopoly situation

For the last 15 or more years, the French State has sought to encourage the development of the electronic treatment of legal information. This action, which was targeted at the widest dissemination possible of legal information (the legislation), resulted in important initiatives to organise the production and dissemination of databases of legal information, particularly using the Minitel as a distribution channel.

The Statutory Order No. 96-481 dated 31st May 1996 concerning the wider dissemination to the public of databases of legal information¹⁴ sets up the dissemination of the legal information (held on databases) through a single agent (article 7). This concession¹⁵ includes even today, contrary to the position in Switzerland, an exclusivity clause. It includes “Article 4.1 – The dissemination of databases of legal information is given on an exclusive basis for all databases produced by the government administration.”. Even the government departments must operate through the agent (Art. 8. of Order No. 99-122 dated 22nd February 1999 which updates Order No 96-481 dated 31st May 1996 above states: “[...] the dissemination by government departments outside their department, or with their co-operation, of databases of legal information whose data emanates, in whole or in part, from the texts specified in Article 1. whether these databases were initially created for internal use or whether they were directly created for external distribution, is subject to [...] The above mentioned external distribution can only be undertaken by the agent named in Article 7.”)

The agency agreement is effective from 1st January 1998 and last 7 years (Article 6 of the Agency agreement). This length of contract may seem long, in the light of new technological developments, which make it much easier to distribute the information electronically.

¹³ <http://informationjuridique.admin.ch>

¹⁴ <http://www.legifrance.gouv.fr/citoyen/decret.htm>

¹⁵ <http://www.legifrance.gouv.fr/citoyen/concess.htm>

This monopoly cannot, therefore, be economically justified in the same way as it could have been ten years ago.

2.2 A free basic information service

In France as in Switzerland, the nature of the texts gives rise to the difference between a free (or not costly) basic information service and a commercial fee paying comprehensive service.

At present, the dissemination service in France is provided by a company named ORT, the agent with the concession for public dissemination of databases of legal information. Two distinct services are provided: LEGIFRANCE and JURIFRANCE. “LEGIFRANCE, the essential French legal code” is a freely available service on the Internet. It includes a selection of the essential legal code now in force.

In Switzerland the state and the government services can legally undertake the provision of a basic information service. The Federal Statutory Order RS 170.512.2 gives in Article 3. some definitions:

“ a. *legal information*: The legislation and international treaties (including the preparatory memoranda [...]), the jurisprudence [...] of the Federal authorities and the data emanating from registers with a legal significance.

b. *electronic publication*: The dissemination of data by electronic means (i.e. the Internet) or on electronic media (i.e. CD-ROM).”

Article 4. defines the scope of electronic publication: “The Confederation makes itself responsible to publish legal information, including the principal retrieval tools, such as the directories, the indices and text matching software. As well as the publication of legal commentaries on legal information destined for the public.” So the State must mandatorily, according to the order, limit itself to the provision of a basic information service, “universal service”, and must leave to the private sector the provision of value added services. The definition of this basic information service provision poses a real problem in the light of the rapid technological evolution. An Internet site with an integrated search engine facility was impossible to find 5 years ago. Now, search engines are considered the minimum requirement for accessing information on an Internet site.

In 5 years time what kind of standard tools will be freely available and consequently considered as “basic” or “universal”? (agents, translators, etc ?). For example, the Swiss Federal Supreme Court has undertaken to carry out experiments for automatic translation, and is thinking of making this service available in the next 2 years free of charge. In its opinion everything that can be resolved by an electronic system without human intervention does not “add value” and can consequently be considered as a “basic information service”.

The legal commentary on the Swiss Statutory Order does not clarify things much by stating, p. 5 : “In most instances the electronic products and services from the Federal administration are not developed directly for the public, but are used primarily to meet its legal contractual obligations or for internal purposes. During their life cycle the products and services internal to the administration are nevertheless being constantly developed and tend to be enhanced with multiple functionality. So, it is possible that a product, because of its functionality, was originally aimed at supporting a basic information service then becomes a real information system which, if the administration offered it to the public, could supplant or at least be a competitor to products in the private sector. It is consequently necessary to keep an eye on the products and services from the administration during their life cycle assessing whether the new functionality conforms to an equitable division between basic information services and added value services and to assess whether these threaten the private sector. If there is a risk it will be necessary to envisage only making available to the public a part of the functionality. It is however important not to prevent the public administration from being innovators.”

Things become even more confusing when the legal commentary states: “that, in exceptional cases and subject to certain conditions, the publications which are not considered to be part of the essential legal information (Art. 3a.), but which are part of the basic information service (such as the JAAC or other newsletters published the Federal Administration)” could be “entrusted to the private information providers for their publication. This situation could for example present itself when the administration then has the possibility of making savings and when, at the same time, one could hope for a wider distribution of the publication in question”

Also, in the legal commentary of Article 5. of the Statutory Order one discovers “that it is inadmissible, in the provision of the basic information service, to deduct or charge higher fees simply to protect the private provider.”

Thus confirming the legitimacy of a free or low cost service. But also confirming the problems of survival arising for the private companies in this market.

Free basic information services are often sufficient for the occasional user. If they are well used (more than 100,000 hits per week for the judgements of the Swiss Federal Supreme Court on the single Eurospider site), in no way can they answer to all the needs, especially those of the legal profession, whether civil servants or not (magistrates, lawyers offices, etc.). A fee paying and more comprehensive service is consequently planned.

2.3 A comprehensive fee paying service

“JURIFRANCE, documentary and professional access to French law” groups stand alone products (CD-ROM) and ‘on line’ services (3617 JURIFRANCE, 3613 JRF, www.jurifrance.com). The documents of LEGIFRANCE (free universal service) and those of JURIFRANCE come from the same source, the updates are carried out by the same production operation, so that the two services from the agency have the same level of quality and guarantee equality to all users of the public service.

Companies like Swisslex-Westlaw (for Switzerland) or ORT (for France), holders of the agency concessions as providers of databases for legal information, currently or in the past, seem to have difficulty to guarantee a good service on one hand and to run a profitable fee paying service on the other. It is difficult to obtain precise figures. For example, in its last press release dated the 28th September 1999, Swisslex-Westlaw states that “the Confederation, half the cantons and a number of lawyers offices make daily access on Swisslex-Westlaw”. It is impossible to obtain, even approximately, the number of users (institutions and/or lawyers) or the number of searches made, even though some information is provided to the last decimal point (share capital and its distribution between shareholders, potential market, numbers of documents in the databases and the number of links between documents.). These companies seem to have difficulties balancing their accounts. The incomes available in the 1980s are no longer available. The ‘on line’ or partially ‘on line’ services are offered free. Switzerland confirmed the notion of a free service on 24 June 1999 with the “Statutory Order of the Federal Chancellery concerning taxes on the transmission of legal information.”.

“Other experiences such as Avocatel, a French fee paying service exclusively for professionals, have provided useful lessons. So it seems that the management of multiple access codes and subscriptions required such a high level of technical intervention for the private operator that the costs made the service too expensive and contributed to its eventual demise over the years without a successor to provide the service since.”¹⁶

Over and above this, the users destined to use these fee-paying services are often the providers of the raw information (Magistrates and Judges for example for jurisprudence). Case law being generally excluded from the free universal service (as in France) means that the majority of Judges are hostile to this system. They believe that tax payers have already paid with their taxes for the judgements from the court and that it is the State responsibility to ensure that every person has access to the law, including that generated from precedent..

In France, the most hostile are the Judges of the French Supreme court (Cour de Cassation) who are disgusted at having to pay to consult their own work (judgements). They have reacted and launched their own CD-ROM of jurisprudence. It is being debated whether to disseminate this information to the judicial body, via an Intranet, which is allowed according to the Statutory Order of the 31st May. Moreover, still in France, the French Supreme Court now disseminates regularly, on the Internet, its information bulletin¹⁷, which includes the pertinent reasoning to the more significant judgements themselves held on the Internet site of the French Supreme Court¹⁸.

In Switzerland, the judgements of the Federal Supreme Court (ATF) are provided by Swisslex-Westlaw on a CD-ROM or ‘on line’, as the users wishes, on a fee paying basis. Eurospider Information Technology AG¹⁹ also makes these judgements available on the Internet²⁰, free, on behalf of the Federal Supreme Court, since December 1996. In March 1999, this company has improved the retrieval facilities in the database of the judgements of the Federal Supreme Court.

¹⁶ **BERTRAND (Bruno)**, *Peut-on publier les décisions de justice sur Internet ?*, Gazette du Palais

¹⁷ Bulletin d’information de la Cour de cassation (BICC)
http://www.courdecassation.fr/_Annuaire/_BICC/bicc.htm

¹⁸ Cour de cassation (The French Supreme court) <http://www.courdecassation.fr>

¹⁹ «Eurospider Information Technology AG is a spin-off company of the Swiss Federal Institute of Technology (ETH), Zürich. It was founded on April 13, 1995 to commercialize an information retrieval system... particularly strong in handling multiple language document collections.»
<http://www.eurospider.ch/eurospider/who/who.html>

The Federal Supreme Court provides Eurospider with the information and finances this Internet service. The Federal Supreme Court has decided to take on, during the year 2000, the technical management of Internet service, rather than continue sub-contracting the work to Eurospider. They will take on the management of the server and the updating of the information. But, they will go on paying a royalty to Eurospider for the software they have developed.

But internally the Judges of the Federal Supreme Court use none of these services. Negotiations Swisslex-Westlaw for a one-year contract have now concluded. These negotiations were held up for a long time on the pricing issue (The terms of the contract remain confidential). The first version of Swisslex (Mainframe version) was tested at the time but has never been considered as a suitable tool by the Federal Supreme Court. Federal Supreme Court has been using, since 1991, a strictly internal database of court judgements (ATF). Even the surrogate Judges must travel to the offices of the Federal Supreme Court to consult the database. The declared policy of the Federal Supreme Court is not to allow this database to be consulted from outside. This internal database is broader based than the public databases (Swisslex-Westlaw and Eurospider only include 10 % of judgements, that is those which are published). The internal database contains approximately 25 % of the judgements and a monohiérarchic multilingual indexation implemented thanks to the Jurivoc legal thesaurus.

2.4 The dilemma of transparency of decisions versus the protection of privacy

Only publishing legislative texts is not very worthwhile. These are useful when they are associated with the jurisprudence, precedent and case law. The question of the protection of personal (private) data is then raised. Let's take a French example. In France, "Legislators clearly wished, following a tradition of making public the decisions of the judiciary going back over several hundred years, and in common with many countries, that the solution proposed by a civil judge to some litigation between individuals should be known by all citizens except in exceptional circumstances. Following this line of thinking, besides giving free access to the court rooms to participate in the hearing, the list of cases and the results of the deliberations are posted in the court rooms so that lawyers and individuals can freely take note of the results.

²⁰ <http://www.eurospider.ch/BUGE/>

In the same spirit Article 11-3 of law No. 72-626 dated 5th July 1972 states that “*third parties have the right to request the delivery a copy of the judgements given publicly*” without conditions attached, other than a modest fee to the clerk of the court. This means that according to the law no special confidentiality is attached to civil judgements given publicly [...] Nevertheless the demands of speed and efficiency of our modern society lead to the requirement for the improvement of the way of disseminating non-protected information and it is suggested the Internet may be suitable [...] to avail of access to legal judgements on the Internet on the same day as the hearing, and where thanks the naming of the parties involved it would be possible to take note of the summary of the judgement, would constitute important progress to the functioning of the judicial system. Also the indication of the administrative postponement of cases from one hearing to another would be of considerable interest to the interested lawyers for improving the management of their time following different cases.”²¹ “Jusmelun” is an experimental project being followed the court and the bar in Melun from 1997 to 1999.

“ It is not because information on peoples names is seen as being presented to the public that individuals should see their privacy attacked because of this. This is why it is proposed to limit access to peoples names to guarantee their privacy.”²² In fact, Jusmelun, which operated first with total individual privacy, wanted to be the initiator of what was seen to be the operation of a 21st century judicial institution. It wanted to be speedier, accessible remotely and free to the litigants and the legal profession. They planned to favour a new presentation of the civil law procedures adapted to modern information technology, but in harmony with the spirit of the legislators concerning the publication of the judicial decisions and the freedom of access by all citizens. Unfortunately, this experiment is ended since 1999, following the replacement of the Vice-President in charge of the courts in Melun. From now on only the French Minister of Justice can launch this type of project. The operation was relatively simple but it became constrained because it had to conform to directives given by the “Commission Nationale de l’Informatique et des Libertés” (CNIL²³) to use only strictly anonymous information (such as the Case No.).

²¹ **BERTRAND (Bruno)**, *Peut-on publier les décisions de justice sur Internet ?*, Gazette du Palais

²² id.

²³ <http://www.cnil.fr/>

The Swiss Federal Supreme Court has a similar project involving the publication of all decisions made on the Internet. The solutions envisaged are quite similar. The data will be made anonymous by elimination people's names and place names.

Conclusion

The differing motives between the public administration and the private sector are many in the domain of the electronic publication of legal information. The difference are certain to come to the fore quickly, especially as the government administrations, similarly to the private companies, are under strong financial pressure. For example, public administrations are more and more being required to work on performance related contract (in exchange for a budget allocation they must deliver certain services, subject to performance measures. They may have to attract outside resources.. such as selling information. This happened in Switzerland in the case of the meteorological service).

Article 12 of the Statutory Order explicitly provides for the Swiss Government to be able to establish bodies responsible for “regulating the differences between the providers of a universal service underwritten by the Confederation and the providers of services in the private sector. The providers in the private sector, those in the public sector and the end users will be fairly represented on these bodies.”

It is however clear that private companies, with concession or not, will have to find a new place for themselves, will have to justify the added value of their services, if they want to survive economically. This implies offering analysis of legal texts, cross-referencing with jurisprudence and doctrine and improved retrieval tools.

C. Poupa

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<http://www.jurifrance.com/>
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Christine Poupa / Idheap

Christine Poupa is Researcher at the Idheap (The Institute for Advanced Studies in Public Administration, in Switzerland). The Institute is an autonomous Foundation created in 1981 by the University of Lausanne and EPFL (The Federal Polytechnic School of Lausanne). The Institute is funded jointly by the Canton of Vaud and the Federal Government (accredited in 1987 by the Swiss Federal Government). Idheap is the only university level institution in Switzerland offering a MPA program (Master in Public Administration).

Christine Poupa is specialised in information system management in public administration, cyberadministration, cyberdemocracy...

E-mail : Christine.Poupa@comunicon.ch

<http://www.comunicon.ch/cp/cp.htm>

Recent Publications

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