

THE IMPACT OF THE INTERNET ON LEGAL BIBLIOGRAPHY

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1 Introductory remarks

Reporting on developments regarding the Internet is hazardous since most sites are in a constant state of flux. Please note therefore that this research is not a complete survey of the present state of affairs. The author does not offer an electronic information acquisition policy for the Internet; he cannot guarantee the reliability of the Internet sources mentioned. The purpose is to illustrate the possible use of Internet by Dutch lawyers and by foreign researchers interested in Dutch legal information. This report centres on major initiatives to improve access to legal materials.

It is not confined to purely bibliographic issues. Intellectual property issues are discussed if the use of the Internet could be hampered by legal barriers. Publishers and public authorities could invoke copyright protection to refuse consultation of their Web sites. In this context intellectual property issues with respect to citations (3.2), to public documents (4.2) and to databases (5.2) are discussed. A general overview is offered in the national report by Prof. J.E.J. Prins, entitled 'Information and Communication Technology: An overview of Key Regulatory Issues and Strategies in the Netherlands'.¹

2 Access to legal materials

2.1 *Navigation tools*

Access to materials on the Internet is not efficient if a relevant address is unknown. This applies to Dutch lawyers having not enough time to consult a guide to resources on the Internet.² Moreover, documents can be here today, and gone tomorrow. In order to guide the researcher and to deal with the ephemeral nature of material on the Internet, some Dutch law faculties

1. See especially para. 2.2 'Intellectual Property Legislation' and para. 2.3 'Public Information Legislation'.
2. For example: J.G.L. van der Wees and W.G. Renden, *Internet voor Juristen*, Deventer 1997, updated yearly.

construct index pages and continuously check Internet addresses (URLs). A good example is the selection offered by the Tilburg Internet Law Library (TILL) (<http://www.lns.nl/till/tp.html>). This index page collects links to various resources according to a specified subject tree. It has headings such as: company law, constitutional law, family law, tax law, etc. Moreover, it links sources, e.g. case law, and organizations, e.g. the government.³ The many bookmarks of the Utrecht law library (<http://www.jb.rgl.ruu.nl/jurbron.htm>) are promising too. The T.M.C. Asser Institute, an interuniversity centre for research and documentation, has developed a Web site concerning its specializations, e.g. European Law and Private International Law (<http://www.asser.nl>).

The information service of the National Library of the Netherlands, the Dutch Electronic Subject Service (DutchESS; <http://www.konbib.nl/dutchess/docs/info.html>), is a Subject Tree which indexes a selection of legal resources according to the Dutch Basic Classification. The Internet resources are selected on quality and relevance for the academic community and are annotated by subject specialists at the participating libraries. Foreign researchers may retrieve the information by browsing the English subject terms and annotations.

The Research and Documentation Centre of the Ministry of Justice offers English information concerning the issues dealt with in the European Journal on Criminal Policy and Research (http://www.minjust.nl/b_organ/wodc/welkom/WODC_ENG.HTM). Private companies like Kluwer Law International (<http://www.kli.com/search.htm>) list the titles of their journals and electronic products. University libraries catalogue titles of electronic journals on the Internet to cope with the growing quantity of these materials. However, the level of specificity of these sites varies since titles of journals are less specific than issues dealt with in a journal. Another problem is that organizations and volunteers limit the contents of their Web sites to their target groups.

Search engines are particular navigation tools. The purpose of a search engine is to find Web pages or data archives that contain the words the researcher specifies.⁴ Most Internet law sites offering search engines to the public are not limited to Dutch law. The LawCrawler (<http://www.lawcrawler.com/index.html>) is a Web Crawler for legal materials which provides the possibility of choosing between the USA and other countries. The LawCraw

3. J.G.L. van der Wees, KUB gaat op Internet!, *De Juridische Bibliothecaris* 1997, (pp. 29-30) p. 29.

4. D. MacLeod, *The Internet Guide for the Legal Researcher*, revised second edition, Teaneck NJ 1997, p. 4:9.

ler is related to the FindLaw Web Guide which includes a Legal Subject Index, Cases and Codes, Law Reviews, etc.⁵ An interesting search engine which gives priority to Dutch law has been developed by a Legal aid board (<http://www.rechtsbijstandarnhem.nl/cgi-bin/SrchJT.CFM>). Apart from a few judicial decisions, this site contains many links to Acts and Decrees, to official reports and orders, to municipal and provincial byelaws, etc. The search engine of the Legal aid board evaluates the size and quality of the links; it gives the opportunity to select a certain type of document, e.g. speech or informative text. However, this Web site confirms that organizations limit the contents of their Web sites to their target groups.

2.2 *Search results*

It is impossible to select the best index page or search engine for Dutch law on the Internet; they are complementary devices. It is recommended to consult more than one Web site for the same search to increase the likelihood of finding the required information.⁶ Most search engines are poor, but at least they index different fields (e.g. hyperlinks, titles, abstracts).⁷ Consequently, full-text versions of court decisions cannot be found, even if all of them contain the relevant term, e.g. 'goodwill'.

The researcher has to use more hyperlinks and Web Crawlers in order to approach a degree of completeness: e.g. to find all cases dealing with the question of product liability for defective diving boards. If he follows this advice, it is nevertheless impossible to establish any sort of completeness because the relevant information available on the Internet but not found, is unknown. Dutch lawyers and comparative researchers will have to face the general problem of recall and precision.

Precision does not refer to the part of the information on the Internet not retrieved in a search, but to the relevancy of the information found in the result. However, the precision of the information found by means of legal Web Crawlers is low because electronic documents are seldom indexed.

5. M. Roznovschi, Building an Electronic Law Library in a Foreign Country. *The Internet Solution*, *International Journal of Legal Information* 1996, (pp. 161-195) pp. 172, 173, 178, 181; cf. D. MacLeod, *The Internet Guide for the Legal Researcher*, revised second edition, Teaneck NJ 1997, p. 4:3, p. 5:144.
6. Cf. D. MacLeod, *The Internet Guide for the Legal Researcher*, revised second edition, Teaneck NJ 1997, p. 4:11.
7. H. Besemer, *Informatie op het Internet*, in: *Online opsporen van informatie*, E.G. Sieverts and M.W. de Jong-Hofman (eds.), 6th ed., The Hague 1996 (pp. 105-110) pp. 108-110.

Adding subject terms to all the resources would help users deal with the sometimes overwhelming amount of information available.⁸ Standardized indexing is necessary to control misspellings and to reduce irrelevant information. Standardized indexing needs controlled languages and especially thesauri consisting of normalized relations between the terms selected.

Unfortunately, there is no thesaurus covering Dutch law. A multilingual thesaurus to help foreign researchers looking for Dutch publications, is not available either. The keywords of the Index to Foreign Legal Periodicals, e.g. 'judicial review of administrative acts', are too broad, being based on Zweigert and Kötz's functional concepts. These keywords are merely a modest step towards a comparative thesaurus⁹ which could enhance the precision of search results. Comparative studies are needed to build an adequate thesaurus out of the keywords of the Index to Foreign Legal Periodicals. The formation of immanent concepts may result in specific thesaurus terms, e.g. 'full adoption' distinguishable from 'limited adoption'. The first term fits Dutch documents, the last one Austrian rules.¹⁰ Moreover, it should not be allowed that thesaurus terms coincide with legal terms which have a national meaning within their particular legal system. For example 'family provision' as an English concept of providing for the maintenance of a dependant, is misleading if used for indexing continental documents concerning succession.

The lack of precision of search engines stresses the importance of developing a comparative thesaurus not only for Dutch law on the Internet.

3 Citations

3.1 *Bibliographic issues*

The Dutch 'Bluebook' is a uniform system of citations and abbreviations which has been published recently (<http://www.kluwer.nl/juridisch/leidraad>).¹¹ These guidelines have not been established as a generally accepted

8. Cf. L. Louis-Jacques, Current electronic resources on international law, *De Juridische Bibliotheecaris* 1995, (pp. 17-20) p. 19.

9. C.J.P. van Laer, *Het nut van comparatieve begrippen* (The usefulness of comparative concepts), *Ius Commune Europaeum* 20 (doctoral dissertation), Antwerpen/Groningen 1997, p. 183 (English summary).

10. H.D. Krause, *Creation of Relationships of Kinship*, Chapter 6 of Volume IV in: *International Encyclopedia of Comparative Law*, Tübingen/The Hague/Paris 1976, p. 90.

11. *Commissie Leidraad* (G.A.I. Schuijt ed.), *Leidraad voor juridische auteurs*, Deventer 1997.

standard of legal citation, but they will provide a common basis. These standards are consistent and not detailed in order to be practical. Not much attention has been paid to the impact of the Internet on legal bibliography, however. It is recommended to add the Internet address and the date of consultation to the bibliographic references advised for the print format (para. 2.2.15). If a case is not published as a hard copy source but in e-journals containing court decisions, it is recommended to state the clerical number assigned by the court's office (para. 4.3). However, it might be professionally unethical to refer to cases digitally published immediately prior to trial.¹²

If a document is not published on paper, the instability of Internet sources implies a difficulty regarding bibliographic control aggravating the lack of complete and accurate citations. The Web address, alone, is not sufficient to locate an article in an electronic journal having no hardcopy on the library shelves. To facilitate citing the Citation proposal of the Coalition of e-journals (http://www.urich.edu/~jolt/e-journals/citation_proposal.html)¹³ asks for additional data, e.g. paragraph numbers. The Citation proposal is not, however, an internationally accepted format prescribing and ordering data necessary to cite articles online in a proper way. The Dutch 'Bluebook' only states that paragraph numbers in court decisions are optional elements (para. 4.3) although paragraph numbers are unique identifiers, designating the units of decisions of e.g. the Supreme Court. This reluctance to be more strict concerning bibliographic control may be connected to the policy of the Dutch 'Bluebook' relying as it does on the print format if available (para. 2.2.15).

3.2 *Intellectual property*

A standard method of citing documents on the Internet has not been developed in the Netherlands. Originality in page numbering cannot be claimed successfully and accordingly it is unlikely to attract copyright.¹⁴ A method or style for citing court decisions now and in the future in a practical way, cannot be considered as a work protected by copyright.¹⁵ Citation rules are functional rules leaving insufficient freedom of choice; they fall outside

12. L. van Almelo, *Juridische dienstverleners schaars op Internet*, Account 1996, (pp. 17-19, 23) p. 23.

13. Cf. D. MacLeod, *The Internet Guide for the Legal Researcher*, revised second edition, Teaneck NJ 1997, p. 7:12-13.

14. G. Vandenberghe, *Rechtsinformatica kruist informaticarecht*, *Computerrecht* 1985, (pp. 67-68) p. 68.

15. Cf. S. Gerbrandy, *Kort commentaar op de Auteurswet 1912*, Arnhem 1988, p. 71, p. 116, p. 190, p. 194.

the scope of copyright law.¹⁶ If court decisions are published on paper and in e-journals the publisher of the paper version cannot prohibit the use of his page or paragraph numbers. This is an important conclusion since Wolters Kluwer, publishing the Netherlands Law Reports (NJ = Nederlandse Jurisprudentie) and other sources, has a quasi-monopoly as regards the Dutch market.

Hyperlinks do not have a firm status in Dutch copyright law. The assumption is that referring to a Web address does not violate intellectual property rights.¹⁷ The hyperlink is only a footnote which makes the visitor of an Internet site aware of the existence of a particular document on another site. Mentioning a Web address is not comparable to a citation of passages from others.¹⁸ Although the hyperlink has a lot more impact than a footnote, in the sense that it makes it easier to access the information it refers to, it does not seem appropriate to classify the hyperlink as a communication to the public of the works on the site it 'links' to.¹⁹ Bibliographic details solely intended to make the work accessible, do not harm its exploitation and have to be freely usable.²⁰ Hyperlinks only reporting the URL of another Internet site, can be seen as such bibliographic details. References to Internet

16. P.B. Hugenholtz, *Auteursrecht op informatie* (Copyright in information; doctoral dissertation), Deventer 1989, p. 37; cf. E.J. Dommering, *An Introduction to Information Law. Works of Fact at the Crossroads of Freedom and Protection*, Chapter I in: *Protecting Works of Fact*, E.J. Dommering and P.B. Hugenholtz (eds.), Deventer/Boston 1991, (pp. 1-40) p. 36; cf. F.W. Grosheide, *Standards of qualification for the protection of literary and artistic property in Dutch copyright law*, in: *Netherlands reports to the fourteenth international congress of comparative law*, J.H.M. van Erp and E.H. Hondius (eds.), The Hague 1995, (pp. 175-189) pp. 185-186.
17. Cf. G. Brunt and M. Schellekens, *Auteursrecht in DigiWorld*, Chapter 1 in: *Intellectueel eigendom in digitaal perspectief*, C.G.E. van Hattem (ed.), Alphen aan den Rijn/Diegem 1996, (pp. 17-42) pp. 35-36. This national report is confined to copyright; it does not study forms of intellectual property such as trademarks extended to domain names of companies.
18. The Dutch Copyright Act, section 15a, considers the quotation of passages from other writers. The exclusive right of the author to make public or to reproduce is limited by the right to quote in section 15a. See for a critical study of section 15a: M.R. de Zwaan, 'Zeer apart': een beoordeling van 10 jaar citaatrecht, *Informatierecht/AMI* 1995, pp. 183-190.
19. D.J.G. Visser, *The economic rights involved. The Netherlands*, in: M. Dellebeke (ed.), *Copyright in cyberspace*, Amsterdam 1997, (pp. 124-143) p. 127.
20. D.W.F. Verkade, *Intellectuele eigendom*, Chapter 5 in: *Recht en computer*, H. Franken, H.W.K. Kaspersen, A.H. de Wild (eds.), 3rd ed., Deventer 1997, (pp. 178-229) p. 227 footnote 85; cf. C.J.P. van Laer, *Exploitatie van gegevensbestanden. Welke mogelijkheden biedt de Auteurswet?*, Open 1990, (pp. 46-48) p. 47.

addresses linking to public documents, e.g. court decisions, certainly do not violate the rights of copyright holders.

4 Public documents

4.1 *Internet resources*

There are some Dutch initiatives to make public documents more freely available. The site of the Lower House²¹ (<http://www.parlement.nl/int/index/docs/indexv.htm>) contains information on the Members of Parliament. It includes recent documents. There are English, German, French, and Spanish areas. Moreover, there are about seven full-text versions of Dutch Acts and Decrees available in English by <http://www1.tip.nl/~t787709/engels.htm>. The majority of the texts on this site, about one hundred, are in Dutch. This incomplete collection is the result of the private non-commercial efforts of Manon van Tongeren who tries to keep the list up to date.

A commercial service by a private publisher (<http://opmaat.sdu.nl> and <http://regelmaat.sdu.nl>) provides subscribers with delivery of public documents and a current awareness system. With the help of a profiling service, a subscriber can define the type of information in which he is interested. This Internet service improves access to the complete texts of the Bulletin of Acts and Decrees of the Kingdom of the Netherlands, of the Netherlands Government Gazette, of official reports of the Upper House and the Lower House, etc. Commercial services are not free and require contracts and passwords.

4.2 *Intellectual property*

The Dutch Copyright Act 1912, as amended (<http://www.lns.nl/lns/autwet.html>), protects the exclusive right of the author to communicate his work to the public, and to reproduce his work. Under section 11 of this Act copyright does not subsist in public documents such as statutes, decrees or court decisions. These basic texts are recognized as being in the public domain. Apart from these public documents, section 15b allows for the protection of publications if a reservation has been made by the government.²² This

21. The Dutch Parliament has two chambers: the Upper House or First Chamber, and the Lower House or Second Chamber.

22. P.B. Hugenholtz, Protection of and vis-à-vis databases. The Netherlands, in: M. Dellebeke (ed.), Copyright in cyberspace, Amsterdam 1997, (pp. 491-497) p. 95.

implies copyright protection for third-party information, e.g. the various publications of the Netherlands Central Bureau of Statistics (CBS). Reservations under section 15b are seldom made.²³ Besides, added-value information (e.g. abstracts) given by editors of commercial publishers of texts of judicial decisions, is protected against unauthorized reproduction. However, the commercialization of public data sources could hamper Dutch copyright rules to guarantee effective access to government information on equal terms.²⁴

5 Developments

5.1 *Electronic journals and public documents*

The publishing of the Electronic Journal of Comparative law is an interesting project being undertaken by the Schoordijk Institute of Tilburg University, and by the Molengraaff Institute for Private Law of Utrecht University (<http://law.kub.nl/ejcl/>). An advantage of this law journal published only in electronic format is the possibility to link articles with (translated) legal sources like legislation and judicial texts, making footnotes obsolete. This journal controls quality by means of a peer review process in order to affix the academic 'seal of approval' to an electronic version of a work, if possible. The economic viability of this initiative will be tested.

Most government-held information is in print form, but this is changing. The Dutch government has plans for an Internet site as an entrance to official publications of government departments (<http://sys1.minbiza.nl/dgob/ibi/telematica/ntvo/>). However, official publications or judicial decisions without added-value information (e.g. abstracts) will not be intelligible to ordinary citizens. Added-value information remains a task for commercial publishers according to the plans of the Dutch government. The temptations are the same and the legal issues similar in the United States and in Europe.²⁵ A Dutch author has argued that the government has the constitutional obligation

23. P.B. Hugenholtz, Auteursrecht op overheidsinformatie, in: A.M. van Eyck (ed.), *Nieuwe sleutels tot overheidsinformatie*, The Hague 1993, (pp. 131-135) p. 132.

24. E.J. Dommering, An Introduction to Information Law. Works of Fact at the Crossroads of Freedom and Protection, Chapter I in: *Protecting Works of Fact*, E.J. Dommering and P.B. Hugenholtz (eds.), Deventer/Boston 1991, (pp. 1-40) p. 31.

25. H.H. Perritt, *Law and the information superhighway*, New York etc. 1996, p. 470.

to publish the complete texts of all judicial decisions via the Internet.²⁶ Nevertheless, the USA practice of publishing the main judicial decisions via the Internet, is not expected to occur in the Netherlands in the near future. The publication of all judicial decisions via the Internet might cause an excessive citation of cases during trials, with the consequential expense to the client. Practitioners tend to feel that a judgment which is wholly related to disputed facts, should not be included in the files.

5.2 *Intellectual property*

Developments concerning the protection of databases are important since most Web sites are databases. Databases are protected by Dutch copyright if the collection of factual data²⁷ is the result of an original selection procedure expressing the personal vision of the collector. This requirement was formulated by the Supreme Court of the Netherlands in the judgment of 4 January 1991 in the case of *Romme v. Van Dale*.²⁸ This dispute centred exclusively on the question of whether the corpus of headwords in the most authoritative dictionary of the Dutch language (Van Dale) is in itself a work of literature, science or art which qualifies for copyright protection. In assessing the grounds for appeal, the Supreme Court decided that in order for an object to qualify as a work of literature, science or art, it is necessary for it to have an original and individual character bearing the personal imprint of its maker. However, this requirement is difficult to fulfil, as may appear from the following consideration: a collection of words which comprises a part of the Dutch language is in itself no more than a number of factual data which do not in themselves qualify for copyright protection. This would be otherwise only if that collection were the result of a selection process expressing its maker's personal views. From the considerations of the Supreme Court it can be deduced that it is difficult to accept that a database shows creativity if the database covers a field without any selection.²⁹

26. A.A.L. Beers, *Overheidsinformatie op Internet*, *Nederlands Juristenblad* 1996, (pp. 1708-1716) p. 1712.

27. An isolated factual datum is unprotected: P.B. Hugenholtz, *Auteursrecht op informatie* (Copyright in information; doctoral dissertation), Deventer 1989, p. 134, pp. 136-137.

28. NJ 1991, 608. Informal translation of this judgment in: *Protecting Works of Fact*, E.J. Dommering and P.B. Hugenholtz (eds.), Deventer/Boston 1991, pp. 93-96 (Appendix I). Cf. F.W. Grosheide, *Standards of qualification for the protection of literary and artistic property in Dutch copyright law*, in: *Netherlands reports to the fourteenth international congress of comparative law*, J.H.M. van Erp and E.H. Hondius (eds.), The Hague 1995, (pp. 175-189) pp. 188-189.

29. B.N. Westerbrink, *Juridische aspecten van het internet*, Amsterdam 1996, p. 96.

In order to provide protection to databanks which do not meet the conditions of originality, article 7 of the EC Database Directive³⁰ grants *sui generis* protection, independently of the eligibility of the database for protection by copyright:

‘(1) Member States shall provide for a right for the maker of a database which shows that there has been qualitatively and/or quantitatively a substantial investment in either the obtaining, verification or presentation of the contents to prevent extraction and/or re-utilization of the whole or of a substantial part, evaluated qualitatively and/or quantitatively, of the contents of that database.’

The words ‘qualitatively and/or quantitatively a substantial investment’ are clarified by Consideration 7 to adopt the Directive. This Consideration states that the *sui generis* protection is a solution to the problem that whereas the making of databases requires the investment of considerable human, technical and financial resources, such databases can be copied or accessed at a fraction of the cost needed to design them independently.

The protection of the Directive will not apply to the public domain, according to article 13:

‘This Directive shall be without prejudice to provisions concerning (...) access to public documents, (...)’

This exception to article 7 recognizes the public interest in government information. The survival of the exception covered by article 13 will depend on the contents of the legislative proposal for the implementation of the EC Database Directive into the Dutch legal system. Commercial publishers and law libraries are interest groups monitoring the process of drafting this legal instrument. However, legislatures are likely to listen disproportionately to the voices which speak for large organized interests.³¹

30. Directive [96/9/EC] of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases; Official Journal No. L 77, 27/03/1996 p. 20. Cf. H.W. Wefers Bettink, Databankrichtlijn: de geschriftenbescherming voorbij?, Nederlands tijdschrift voor Europees recht 1996, (pp. 169-173) pp. 170-171.

31. E. Mackaay, The Economics of Emergent Property Rights on the Internet, in: The Future of Copyright in a Digital Environment, P.B. Hugenholtz (ed.), The Hague etc. 1996, (pp. 13-25) p. 25.

6 Conclusions

According to Dutch lawyers and organizations the Internet makes it easier to access legal information, but is no alternative for paper copies. Dutch lawyers will prefer browsing Internet sites without using them as principal sources in their files.³² The Internet is very efficient if the legal researcher has found a document he wants to consult or to download. However, if the researcher is not sure about the presence of a document on the Internet, it takes a lot of time to locate a relevant document. Researchers need commercial organizations to enhance the quality and the stability of legal information on the Internet, but private monopolies can jeopardize effective access to government information on equal terms. This stresses the importance of the plans for an Internet site as an entrance to official publications of the Dutch government.

Internet does not exist in a legal vacuum. Dutch copyright rules cover analogous information and digital information as well. Copyright in citation methods is not possible. Copyright does not subsist in public documents such as statutes, decrees or court decisions. Dutch copyright mostly does not hamper the development of Internet resources. However, the implementation of the EC Database Directive in the Dutch legal system has to be carefully overseen in order to prevent the negative impact of the Internet on legal bibliography.

32. C.J.P. van Laer, *Internet in de praktijk*. Juridische informatie, Open 1996, (pp. 98-99) p. 99.