

Legal Information Supply and the Digital Divide

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1 Starting Points

The title of this contribution to Scandinavian Studies in Law – Legal Information Supply and the Digital Divide – suggests a broader perspective than an investigation into substantive law within a certain topic area such as data protection, intellectual property rights, etc. Actually, the focus will be on a fundamental aspect of a democratic society adhering to the rule of law, namely, legal information supply. This approach implies that citizens have a right of access to legal information not least considering everyone’s obligation to know the law so as not to commit crimes or breach other rules and regulations.

The digital divide, furthermore, is a notion that refers to the fact that the introduction and use of modern information and communications technologies (ICT) does not automatically take place on fair grounds. It is well known that in a global perspective access to ICT varies considerably between people in industrialised countries as opposed to nations that still are at an agricultural stage. In this study though, we will instead concentrate on discrepancies within what may be referred to as well-developed states, such as the Scandinavian countries.

To further illustrate, reference may be made to the on-line Wikipedia which contains the following explanation of the digital divide:

The term digital divide refers to the gap between those with regular, effective access to digital and information technology, and those without this access. It encompasses both physical access to technology hardware and, more broadly, skills and resources which allow for its use. Groups often discussed in the context of a digital divide include socioeconomic (rich/poor), racial (white/minority), or geographical (urban/rural). The term global digital divide refers to differences in technology access between countries.

Essentially, this means the divide between those who have access to digital technology and those who do not. The divide takes in to account wealth, ethnicity and the area of those in the divide.¹

The overall purpose is here to investigate how today’s legal information supply relates to the digital divide as described above. More precisely, the following statements are to be verified or falsified throughout the discourse:

- (a) Access to legal information is a fundamental right in a democratic society
- (b) Digitalisation of legal information requires revitalisation of legal safeguards
- (c) New trust indicators emerge in the network society

It should be noted that a major perspective in this study is the implications of ICT and how it has an impact on the issues discussed below. In addition to the digital divide a major component in the following discussion is legal information, which also lacks a precise definition. In this context *legal*

¹ See “en.wikipedia.org/wiki/Digital_divide”. See also the Digital Divide Network which is an Internet community “for educators, activists, policy makers and concerned citizens working to bridge the digital divide” (www.digitaldivide.net/) and EU Commission report on *Bridging the Broadband Gap* COM(2006) 129 final.

information is used in a relatively generic way including not merely traditional legal sources such as legal rules and regulations, decided court cases, documents reflecting the history of law making etc., but also legal information in terms of legal guidelines emanating from government agencies and public authorities.²

2 Access to Legal Information is a Fundamental Right in a Democratic Society

2.1 General

It is not so that a right of access to legal information is explicitly laid down as a precise principle in e.g. the European Convention on Human Rights from 1950 or in the Swedish constitution. The fundamental laws of Sweden do, however, manifest equality, transparency and predictability.³ At a lower norm hierarchical level a government ordinance – the so-called legal information ordinance⁴ – prescribes that legal information should be made available free of charge to the general public. In addition to this, the Swedish Administrative Development Agency (Verva)⁵ is authorised to issue provisions within the area of technical and legal infrastructures. Furthermore, access to justice, which generally is conceived of as being an integral part of a democratic society – presupposes in practice that legal information is made available to a state's citizens. This is similar to saying that the principle of a right of access to legal information is partly codified, partly supported by other steering mechanisms. It follows from the above that there is reason to conceive of *a right of access to legal information as an implicit fundamental right* in a democratic society. A next step in this analysis involves the different categories of right holders.

2.2 Right Holders

Without any ambition to present an exhaustive list of different kinds of producers and users of legal information certain major categories will be extracted. In brief, producers may originate from the public as well as from the private sectors. The on-line market for legal information supply could easily motivate an analysis itself.⁶ Considering though that the theme of this article is

2 See further Magnusson Sjöberg, Cecilia, *Datorisering av rättsinformation: Särskilt inom den offentliga förvaltningen*, in *En minnesskrift: Juridiska fakulteten i Stockholm 100 år 2007* pp. 286-313. Ed. Claes Peterson.

3 See in particular the Instrument of Government, the Freedom of the Press Act and the Fundamental Law on Freedom of Expression.

4 Rättsinformationsförordningen 1999:175.

5 "www.verva.se" It should also be mentioned that the agency is formally in charge of the new (electronic) Swedish legal information system.

6 See Klasén, Lars, *Legal IR-services – from past to present*, in *Legal Management of Information Systems: incorporating law in e-solutions* pp. 337-358, Ed. Cecilia Magnusson Sjöberg (Studentlitteratur 2005). See also Directive 2003/98/EC on the re-use of public sector information (the PSI Directive).

the digital divide it appears to be more rewarding to shed light on the user perspective.

In the broad community of users of legal information a distinction is conventionally made between professionals on the one hand and laymen on the other. A closer look shows that this categorisation is not as clear cut as it first may appear to be. Not least the Internet has provided quite a few people with means to become what may be referred to as *user experts*. The website “pul.nu”⁷ is an example of this kind of hybrid. In 1998 two journalists initiated this project with the purpose of debating freedom of expression and privacy protection on the Internet. The site was during a period of time a well-known source for up-to-date legal information concerning incidents within a particular field of interest, news concerning case law, etc.⁸ In this context mention ought to be made also to the so called Lawline service where students offer on-line legal advice.⁹ This website is another example of non-professionals providing legal information to the general public for free. Yet another example of user experts taking advantage of the new media is blog¹⁰ applications where legal commentaries, scientific articles, etc. are posted and commented on.¹¹ One more illustration of on-line user expertise is found at “lagen.nu” hosted by a private individual where all the valid laws of Sweden are said to be made available free of charge.¹²

Above we have been dealing with what may be referred to as ‘*prouser*’, i.e. producers of legal information, who to a varying extent base their information dissemination on user activities themselves.¹³ This comment may appear trivial and somewhat misleading as any kind of legal information, originating from a legislative body, court of justice, etc. to a varying extent is based on management of legacy data. However, the Internet media provide new kinds of

7 PuL is an abbreviation for Personuppgiftslagen (1998:204) which is the name of the Swedish Data Protection Act.

8 See also www.squill.se which is a site addressing young people with a support and notification service for on-line – illegal – sexual abuse. This is an initiative by the non-governmental organisation BRIS (Children's Rights in Society) that supports children in distress. According to the website all support services build on volunteer work and financial support, primarily from corporate cooperation and private persons, and to a small extent governmental grants.

9 See “www.lawline.se/”.

10 A blog may be described as web log that provides “commentary or news on a particular subject such as food, politics, or local news; some function as more personal online diaries. A typical blog combines text, images, and links to other blogs, web pages, and other media related to its topic. The ability for readers to leave comments in an interactive format is an important part of many blogs.” “en.wikipedia.org/wiki/Blog”.

11 See e.g. the blog of Nicklas Lundblad (www.myothernotes.com/kommenterat), a well-known researcher and media personality in Sweden. From October 2007 Lundblad will assume the position as Google’s European Policy Manager. See also the blog of Pär Ström who calls himself the “Integrity ombudsman”.

12 Read more about Staffan Malmgren, who is also a research assistant at the Swedish Law and Informatics Research Institute, at “www.juridicum.su.se/iri/stma/”.

13 Another way of reading out the term ‘*prouser*’ is professional user.

intermediate communication channels which in combination with new user behaviours, not least among younger generations, do create a *change of infrastructures* worth taking into consideration.¹⁴ To what extent, for instance, is there reason to adjust legal education concerning methods for information retrieval to these new phenomena? How to convey means for evaluations of trustworthiness, data quality etc. to lawyers as well as other professionals using legal information in their daily work? What measures need to be taken to enlighten the basis of on-line legal information retrieval to the ordinary man and woman?

In the group of users that may be referred to as laymen with regard to legal information we find, of course, all kinds of people; able ones, disabled ones (physically as well as mentally), young, elderly, immigrants, etc. A particular feature that may occur in any kind of user category is that there are individuals that may – expressed in a rather provocative way – be described as computer illiterates. Not least experiences from teaching courses in legal informatics at Stockholm University¹⁵ indicate that some people are not quite apt for interaction with technical entities. This problem is, however, likely to diminish as a result of younger generations so to speak being brought up in an informational society built upon broadband in combination with constant exposure to ICT applications. Nevertheless, it is important to keep in mind that there are aspects of the digital divide that do not necessarily relate to (economic) standards of living.

2.3 *The Current State of Legal Information Supply*

The current state of legal information supply is characterised by a rapid quantitative growth in combination with an internationalisation in terms of trans-border data flows. As commented on above, the legal on-line market is responding to these developments by way of business mergers, technical novelties involving a wide variety of actors including well established public and commercial ones as well as new types of cross-sector consortia.¹⁶

In spite of a vivid business situation there are still *access barriers* to legal information. To mention just a few, information retrieval methods are to a considerable extent still based on Boolean search mechanisms firstly taken into use many decades ago. Of course, the web with services like Google has drastically changed the conditions for information dissemination in general, but not necessarily in favour of legal information retrieval in particular. Measures for evaluation of recall, precision, coverage, etc. are not that easily envisaged.

14 See the blog Appellate Law & Practice managed by a group of federal lawyers, “appellate.typepad.com/appellate/2005/06/appellate_judge.html”. About the need for caution for a lawyer using the blog forum, see a posting about a judge reprimanding a temporary prosecutor for (potentially prejudicial) comments on his personal blog concerning a misdemeanour case, “www.law.com/jsp/article.jsp?id=1146139204085”.

15 See further, Magnusson Sjöberg, Cecilia, *Law and Informatics in a Laboratory Research Environment*, in Festschrift till Peter Seipel pp. 397-411 (Norstedts Juridik AB 2006).

16 See the above mentioned PSI-Directive.

Furthermore, comparatively advanced retrieval tools, using for instance probabilistic (statistical) methods have not yet come into broad use.

Yet another access barrier relates to the situation of insufficient harmonisation of legal document formats, structures and contents representing legal information. Although use of the information standard XML (eXtensible Markup Language)¹⁷ has become a key approach much work remains.

A true challenge, in terms of making legal information more available, concerns the traditional attempt to accomplish contextual readability – or actually conceivability – based on linear text representation. Applications of ICT today offer means for non-linear text management inserting also animations and sounds. To what extent this is/will be attractive also to the legal domain is for the future to tell.

To conclude, the reasoning so far has shown that *access to legal information may be conceived of as an implicit fundamental right in a democratic society*. Expressed rather bluntly, the state has a responsibility to supply legal information and citizens have a right of access to it.

In terms of *right holders* the user community proves to be *fragmented* with no distinct borderlines between professionals as opposed to laymen. A critical factor in this context is the rapid growth of legal information, its internationalisation and how information communications technologies play an important, but not always foreseeable, role.¹⁸ Of particular relevance here is how ICT has become a facilitator for networks enabling exchange of legal information. With regard to the digital divide this is both an advantage and a disadvantage. On the one hand many more may have access to legal information – often for free – on the other hand, not everyone is on-line, which certainly broadens the gap.

3 Digitalisation of Legal Information Requires Revitalisation of Legal Safeguards

3.1 General

The statement that “digitalisation of legal information requires revitalisation of legal safeguards” intends to capture the need for an open-minded scrutiny of conventional legal safeguards in the context of computerisation. Historically the introduction of ICT for legal purposes has been surrounded by attempts to transfer traditional legal safeguards within a paper-based environment into a digital one, i.e. to the extent that there have been any legal considerations at all surrounding the process of digitalisation. As it turns out, however, it is not always advisable to strive to uphold identical safeguards in a digital environment given the fundamental differences for information-processing related to material versus immaterial media. For instance, the conditions for

17 See further *Introduction to law in a digital environment* in: IT Law for IT Professionals – an introduction pp. 9-24 (Studentlitteratur 2005).

18 See e.g. Magnusson Sjöberg, Cecilia, *Critical Factors in Legal Document Management: A study of standardised markup languages*. The Corpus Legis Project (Jure 1998).

tracing changes in a paper document as opposed to an electronic document vary considerably. Too much emphasis placed on traditional qualitative measures such as referencing by means of page numbers associated with printed structures, may in fact turn out to be a drawback as it hinders fully benefiting from dynamic data structures. There is also a risk that a narrow approach to legal safeguards may result in false reliability in electronic representation if those risks for data hampering, etc. associated with ICT are not addressed properly.

The following will further illustrate the need to reflect upon *legal safeguards in the course of digitalisation*. In this context the term *revitalisation* is used as a way of indicating that there is not necessarily a need to come up with entirely new legal safeguards but rather to adjust and develop already existing ones as they can be trusted to represent well-established and long-term values.

3.2 *Electronic Originals*

In a paper-based environment there are well-established routines for making public legal documents official ones. The procedures normally boil down to a printed version in a pre-defined format. Not least in Sweden, much thought has been given to what may provide an electronic document the same status of being an original. In contrast to the situation in e.g. Belgium, France and Norway the Swedish state of affairs is that laws cannot be issued as an electronic original. Noteworthy, is that the formally accepted printed original is produced by electronic means. This is quite an awkward situation considering also that automatic legal decision-making has been a characteristic of the Swedish public administration since the 1970s. There are clear development trends though, that eventually it will be permitted to issue also Swedish laws as electronic originals.¹⁹ As a matter of fact the Swedish Riksdag has decided that regional road traffic regulations are to be published as electronic originals.²⁰

Evidently, quite a few consequences of a *paradigm shift towards electronic originals* can be envisaged. In general terms there will be a need for enhanced security measures with possibly originator-based authenticity rather than format-oriented. In the perspective of the digital divide the introduction of electronic originals will of course even more strengthen the position of those who take an active part in the modern technology-based information society. An argument against electronic originals is that it would challenge “the equality of all before the law” (Chapter 1, Article 9 of the Instrument of Government).²¹ However, not everyone has access to today’s paper-based original, but for instance public libraries are there to provide the general public with both printed and electronic information.

19 See further meeting minutes from the Council for legal information: “www.verva.se/upload/protokoll/Rattsinforad-protokoll-2006-10-30.pdf”. It should also be noted that the Swedish government has initiated a public inquiry into the electronic publication of statutes (Dir 2007:107).

20 See further the preparatory works prop. 2004/05:87, bet. 2004/05:TU, rskr. 2004/05:249.

21 Here is the full reading of Article 9: Courts of law, administrative authorities and others performing tasks within the public administration shall have regard in their work to the equality of all before the law and shall observe objectivity and impartiality.

3.3 *Non-proprietary Technical Platforms*

Another aspect of digitalisation that signals safeguard awareness concerns the technical platform itself. A government's choice to implement its services for legal information supply using e.g. Internet Explorer instead of Linux immediately excludes as well as includes citizens in the access sphere. In an emergency situation, such as a hurricane or food-poisoning situation, access in due time to governmental information on web pages may prove to make the difference between death and survival. Admittedly, these are quite dramatic examples that still draw attention to legal information supply in its vital sense.

The important point to be made is that seemingly technical considerations may have important legal implications. There is therefore a need for a *holistic approach* to the development of *infrastructures* involving technical, organisational and legal aspects. Of particular importance are *non-proprietary approaches* to system design in order to reduce dependencies on certain industry solutions.

3.4 *Indistinct Legal Processes by Way of Web Publication*

Let us move to a core aspect of the theme in this section addressing the need for revitalisation of legal safeguards in the Internet environment. Indistinct legal processes by way of web publication illustrate, namely, how apparently harmless information dissemination via the Internet proves to be legal decision-making in its formal sense. In the so called Olive Oil Case decided by the Supreme Administrative Court (RÅ 2004 ref. 8) *a distinction is made between "pure information" and "decision-making"*.²²

More precisely, the case concerned information published on the website of the National Food Administration (a letter had been sent to the press too) about alleged harmful ingredients in olive oils. This led to merchants – not least with consideration to the National Food Administration's role as a supervisory authority – removing these provisions from the shelves in many food stores with a decrease in revenue for the suppliers in question. This gave rise to the question whether it was possible to appeal against the publication on the website. According to Section 22 of the Administrative Act "A person whom the decision concerns may appeal against it, provided that the decision affects him adversely and is subject to appeal."

The Supreme Administrative Court reached the conclusion that the publication about harmful olive oil ingredients was equivalent to a (legal) decision, and more precisely an administrative decision. Furthermore, this administrative decision was subject to appeal by the private olive oil suppliers. The Court's reasoning included a statement that the web publication could not be conceived of as "pure information". The labelling "Information" on the web, without any signature of a public official, did thus not exclude it from the sphere of a decision.

With this conclusion as a base the Court went on to analyse the decision reached, which was found to be beyond the scope of the authorisation of the National Food Administration. The decision was therefore overruled.

²² See further Ragnemalm, Hans, *Förvaltning i förvandling*, in *Förvaltningsrättslig tidskrift*, number 4, 2005. pp. 445-457.

Summing up, the Olive Oil Case shows that publication of legal information on a public website calls for special attention. The media and communications channel does not as such exclude potential legal consequences. One may wonder to what extent this case law will impose constraints on, for example, consumer information via Internet.²³ Actually, there is no such general risk provided that such actions fall within the authorisation of the agency in question spreading the information to the general public. It should also be mentioned that the information on the National Food Administration website was not forbidden as such, but merely to be integrated in the existing legal framework of administrative decision-making.

It is not obvious how a case like the Olive Oil one relates to the digital divide. Generally speaking, it is rewarding that the existing legal framework is upheld also in the Internet environment in order not to let it develop into a lawless setting. Coming back to the heading of this Section “digitalisation of legal information requires revitalisation of legal safeguards” the Olive Oil Case certainly has proved the relevance of it.

3.5 *Infringements of Data Integrity*

A final illustration of how digitalisation of legal information gives rise to issues concerning legal safeguards concerns what here is referred to as infringements of data integrity. The wording has a deliberate technical connotation as it intends to signal that there is reason also from a legal point of view to treat information in a strict way resembling secure data processing. In more concrete terms, it concerns *explanatory approaches* that have become common as one of many e-government activities.

Public agencies providing on-line answers to FAQ-questions²⁴, presenting applicable legal rules in citizen-friendly ways are two examples of this trend. Of course the phenomenon of explaining law to the general public is not new as such. For instance, within the areas of social insurance, taxation and student administration, printed brochures in easy readable formats have long been distributed to households. So what makes the same information published on the web different?

To begin with, it is not “the same information”, but often comparatively more in breadth as well as in depth. The web-based information is commonly presented in an *interactive format*, sometimes advice from living and/or electronic persons add value too.

Just to give a few examples, the Data Inspection Board has on its website a section of questions and answers supplemented with a call centre where “two lawyers are prepared to answer your questions”.²⁵ It should be noted that even officials working at help desks depend on on-line legal information in order to fulfil their service tasks. The Swedish National Board of Student Aid (CSN) in its turn, has a whole set of interactive services providing legal information, for

23 See e.g. the Swedish Consumer Agency: “www.konsumentverket.se/mallar/en/startsidan.asp?lngCategoryId=646”.

24 FAQ stands for Frequently Asked Questions.

25 See further “www.datainspektionen.se”.

instance, support for calculation of entitled student aid.²⁶ The Social Insurance Agency has taken interactivity even further by introducing an electronic official with the name of Hanna, see below.

The web site visitor is encouraged to “Pose a question and receive the answer directly in the box” (see figure below). Just to illustrate, the following question is inserted into the box; “Is there a right to take care of a sick 16 year-old child?” More precisely, the question concerns whether an employee has a right to stay at home from work for this purpose and at the same time be entitled to insurance benefits.

Hanna’s automatically generated answer is correct but not comprehensive enough. In order to find out whether the basic right of temporary parental benefit applies also to someone aged 16 it is necessary to follow the link “More information” leading to the web page – “Sick child” – presenting the correct facts, namely that this right is applicable up till 12 years.

1. Fråga Hanna 



Ställ en fråga och få svaret direkt i denna ruta.

No matter how good a purpose lies behind attempts to simplify law in order to explain it to the general public there is every reason to be careful. As evident to any legally educated person, descriptions of what the law actually is meant to say involves – to a varying extent – subjective interpretation. Practical experiences have shown that the potentials of the web as a communication channel attract professionals other than lawyers to take up the role as *intermediators of law*. This applies in particular to information officers, knowledge managers, web editors and the like. More precisely, it can be noted that these professional managers of information are eager to rather abruptly re-represent legal rules and regulations, decided cases, etc. in deceptively more readable formats.²⁷

Being reluctant to explanatory approaches to digital legal information supply – for data integrity reasons discussed above – does not of course exclude fulfilment of official requirements concerning web design within e-

²⁶ See further “www.csn.se”.

²⁷ Within the public sector, the risk for state liability for pure economic loss should not be neglected. According to Chapter 3, Section 3 of the Swedish Tort Liability Act (1972:207) the state or a municipality shall compensate for pure economic loss caused by a public authority by way of fault or negligence providing incorrect information or advice, if given the circumstances, there are special reasons. In consideration hereof the character of the information or advice, their connection to the scope of the public authority’s area of activity shall be taken into consideration as well as the circumstances when disseminated.

government.²⁸ The important distinction is here between simplifications of access to the carrier of the information as opposed to the contents itself.

In addition it can be mentioned that practical experiences from taking part in the development of e-government solutions have pointed at clashes between professional roles. Lawyers naturally base their approach to legal information management on traditional views about how different legal sources relate to each other, well-established principles of interpretation, etc. Communication experts, on the other hand, are not bound to the same methodological constraints and tend to *reshape legal information* in order to make it readable to the laymen. Quite often it boils down to the very particular question of *who has the right to manage legal texts as an information resource on the web*.

Yet another aspect of the digital divide, which has not been that much debated, concerns the situation within a given organisation. There are namely also signs of a digital divide within the legal profession itself. The difference between those who are in command of, for instance, a business law firm's case and knowledge management tools and those who are not may very well create a digital divide among professionals.

3.6 Conclusion

The starting point in this section has been that digitalisation of legal information requires revitalisation of legal safeguards. In order to verify this standpoint, or at least illustrate the relevance of the issue as such, the following focus points were investigated. Firstly, the development towards a paradigm shift in terms of a formal acceptance of laws being issued as *electronic originals* was somewhat elaborated on. In the perspective of the digital divide it can be concluded that security measures are a core legal safeguard. In relation to this, the span of the digital divide is dependent on what may be referred to as soft/informational factors. An example of how the design of hard/physical infrastructures also has implications for the digital divide was briefly touched upon in the context of *proprietary versus non-proprietary technical platforms* for access to e-government services. *Media equivalence* can here be said to constitute a legal safeguard.

The following two focus points were of a somewhat different character in that they concerned more thorough approaches to digital management of legal information. In the context of what here is labelled as "*indistinct legal processes by way of web publications*" case law illustrated how important it is to encapsulate web publications of legal information into the legal framework. Thereafter it was discussed how *explanatory approaches* may harm the rule of law. The legal safeguard to be stressed in this context is data integrity. More precisely, this concerns a requirement of protection from unintentional change of data as well as the existence of measures for indication of data change that nevertheless have occurred.

A common denominator in all the above-summarised focus points is that the digitalisation of legal information – legal safeguards excluded – is not per se

28 See the Verva-report 2000:5, *Vägledning 24-5immarswebben: Effektivare och bättre service på webbplatser i offentlig sektor*.

increasing or decreasing the digital divide. What is worthwhile reflecting upon though is how *multi faceted the digital divide* within the legal domain tends to be. It is definitely an oversimplification to relate the digital divide merely to (legal) professionals on the one hand and laymen on the other. The matrix below gives a more adequate view of current interrelationships. Apparently a professional as well as an individual citizen might be knowledgeable as well as diminished in relation to each other.²⁹

The digital divide - in the legal domain	Knowledgeable	Diminished
The professional (public official)		
The professional colleague (public official)		
A citizen		
A co-citizen		

4 New Trust Indicators Emerge in the Network Society

Over the years a set of trust indicators have come to signal primarily authenticity and reliability in the context of legal information supply and retrieval. The introduction and use of ICT in the nowadays network-oriented global society have led to certain changes in this respect. The printed paper is, for instance, not necessarily a primary sign of trustworthiness. Instead new trust indicators emerge in the network society.

The notion of trust is in itself complex. Here is, however, not the place for a more in-depth discussion.³⁰ For the purpose of this particular discourse a few comments ought to be made though.

To begin with trust in connection to ICT is generally debated in society. When such value expressions as ‘the rule of law’ (rättssäkerhet) is replaced by, for instance ‘trustworthy computing’ there is reason for a more specific legal approach. More precisely, it concerns the feasibility and potential value of integrating trust aspects in legal discussions about the existing as well as evolving society.

29 There are many examples of how experienced lawyers, medical doctors, etc. are struggling to handle the information systems that they are obliged to use. When the registration fails – due to poor user skill – case and health data are sometimes adjusted so as to fit into the given system architecture. This is of course an unsatisfactory manifestation of the ‘digital divide’ within the professional community.

30 About trust and IT-law See e.g. Magnusson Sjöberg, Cecilia, *Tillit i informationssamhället: Kejsarens nya kläder eller förändrade förutsättningar för rättsutvecklingen*, in Nordisk årsbok i Rättsinformatik (NÅR) 2002. pp. 107-125 and Bing, Jon, *Trust and Legal Certainty in Electronic Commerce: An Essay*, in Festskrift till Peter Seipel pp. 27-49 (Norstedts Juridik AB 2006). About trust in a more traditional legal meaning See e.g. Kleineman, Jan, *Ren förmögenhetsskada: Särskilt vid vilseledande av annan än kontraktspart* (Juristförlaget 1987) and Sandgren, Claes, *Vad är rättsvetenskap?* in Festskrift till Peter Seipel pp. 527-552 (Norstedts Juridik AB 2006).

In the best of worlds trust might function symbiotically with concepts like the rule of law, and possibly also add value to the intellectual work and results. To make this happen, the legal meaning of trust in relation to information and communications technology needs to be specified. Such specification may, for instance, be oriented towards information security and legal risk analyses. To further illustrate, the notion of trust may be categorised in the concepts of well-founded trust/mistrust as opposed to unfounded trust/mistrust. The overall purpose with such a terminological exercise is to expand the methodological tool box for analyses of the legal implications of ICT.

Theoretical studies and practical experiences³¹ indicate that there is a whole set of *new trust indicators as regards legal information supply* that can be associated with the network society.³² Emphasis may to a considerable extent be placed on *functionality* rather than visible format like print on paper. Functionality refers to accessibility with (high) recall and precision, modularity as well as authenticity, and many other factors depending on the kind of application.

A concept well worth introducing in this context is functionality by means of ‘*instancy*’. This is similar to saying that whereas paper print used to manifest trustworthiness, print nowadays might as well signal legacy whilst electronically available information to a larger extent is appreciated as a carrier of instant up-to-date information.

Another example of a trust indicator related to the digital network society is that of *authentication of legal texts by means of annotation(s)*. Roughly speaking, it offers ways of letting others than the text originator add notes to the basic units of information. Depending on the status of the annotator the evaluation of text relevance, etc. is thereby supported.³³

In addition to this it can be noted that peer-reviewing is not an exclusive means for quality assurance but *public review* has also become a decisive factor in the legal domain.³⁴

31 See further e.g. information published at the website of the Swedish Foundation for Legal Information at “www.rattsinfo.se/”.

32 The description “network society” is used here with reference to a society characterised by networks; in particular based on the use of information and communications technologies.

33 This is addressed in Work Package 2 – Authentication of legal texts in the context of legal information retrieval – within the Secure Legal Information Management Project (SLIM), “www.juridicum.su.se/iri/slim”.

34 To further exemplify, in response to the Swedish implementation of the Data Protection Directive 95/46/EC into the Data Protection Act (1988:204) the general public manifested its dislike of the outline of the rules concerning so-called third-country transfers – in practice publications on the Internet – by way of establishing web pages entitled “Do not touch my Internet” and the like. There is no doubt that strong public opinion at the time had an impact on subsequent amendments of the law. This line of activities may be discussed in terms of self-created law, which obviously is quite different from self-regulation which commonly takes place at an organisational level.

5 Concluding Remarks

5.1 Summary

Given the limited framework of an article of this kind it is nevertheless time to conclude whether the hypotheses that were introduced at the beginning have been verified or falsified. The very first starting point was expressed in terms of the general public's access to legal information being a fundamental right in a democratic society. In this context references were made to certain core legal instruments and principles. The notion of legal information was furthermore given a stipulative broad definition. In addition to conventional legal sources originally produced in a printed format such as laws and decided court cases, electronically published legal information, for instance available on-line via web pages, were included. The underlying reason for this comprehensive approach is to be found in the legal steering mechanisms associated with electronically disseminated legal information. Attention was also paid to how multifaceted the group of potential right holders is, acknowledging that it is not a trivial task to distinguish between, for instance, professional users on the one hand and laymen on the other. The discussion boiled down to a conclusion that *it is in fact possible to extract a fundamental right of access to legal information but it can merely be characterised as an implicit one.*

The second hypothesis expressed in this article was that digitalisation of legal information requires revitalisation of legal safeguards. The discussion of legal safety, which may be labelled the rule of law, was related to major development trends in the modern information society. Here focus was on a discussion of the digital divide in relation to electronic originals (of legal publications) and the impact of proprietary vs. non proprietary technical platforms as a basis for e-government. The discussion then moved on to phenomena with legal implications of a somewhat different kind. More precisely, it concerned indistinct legal processes by means of web publications. Another aspect brought into the discussion concerned threats to legal data integrity in relation to attempts to convey the meaning of legal information to the general public.

With regard to the digital divide it was concluded that digitalisation of legal information does not per se enhance the digital divide. Depending on how the digitalisation is carried out though, the differences between those that have and those that do not have access to law may increase as well as decrease. Of major importance here is that an adequate analysis of the situation requires *a multifaceted view of the parties involved* addressing not merely professionals versus laymen but also interrelationships within these categories as well as the general public.

The third hypothesis to be presented was that new trust indicators emerge in the network society. The notion of trust was treated with reference to previous theoretical studies and appreciated as a way of refining analyses of the interaction between law and information communications technology. A major conclusion to be drawn here is that *functionality*, for instance in terms of instant access, appears to prevail over format when legal information is provided by digital means. A law printed on a paper does not necessarily signal trust to the same extent as an up-to date electronic version with the same contents. In this

context in particular the level of *information security* will have an impact on the digital divide.

From the reasonably thorough analysis above follows that all three hypotheses have been verified. What furthermore comes out of the discussion is that the notion of the digital divide – as expected – is vague and ambiguous. Nevertheless, it is rewarding to elaborate on its implications in a legal perspective.

5.2 *Development Trends and Issues for Further Investigations*

In addition to the conclusions drawn above the study of legal information supply and the digital divide suggests that there are quite a few issues that merit further investigation. One of these concerns the legitimacy of what may be referred to as *intermediate law* that evolves in the intersection between normative rule formulation and case-based rule application. FAQ:s (with answers) published on the homepages of public authorities provides an apt example. In spite of the common ambition to reduce complexity, the risk of over-simplification threatening the rule of law is evident. Here the challenge is to manage what can be described as an *explanatory paradox* that has to do with the fact that in principle every attempt to explain law to the general public may hamper fundamental principles of objectivity, equality, etc.

Another issue that calls for attention concerns the role of *interactive law* which may be exemplified by law firms developing new on-line services for sharing knowledge with their clients. Web-based case handling within e-government solutions also illustrates interactive law. The list of examples can be made much longer, and could include legally oriented blogs with a wide variety of senders and (anticipated) receivers. Furthermore, what are the advantages and disadvantages associated with ‘wikis’ in the legal domain, given that the basic idea of encyclopaedias on the web is a knowledge-neutral approach to information supply? More precisely, are there particular segments of law suitable as well as not suitable for wiki-applications? What about a children’s law book on the Internet in the form of a ‘wiki’?

Work towards providing *legal information for everyone* is of course not a stand-alone project for the legal community to be in charge of. Instead, it is closely interrelated with general development trends in society. Not least the impact of ICT has a bearing on the generation gap where younger people have a tendency to use Internet as a primary source for knowledge acquisition. This implies educational challenges both in terms of conveying ICT skills to those in need of that and basic training in legal methodology (principles of interpretation, evaluation of sources, critical reading, etc.) for younger generations of lawyers to be in particular.

All in all it boils down to an intriguing *development of the infrastructures for legal information supply and access*. There are no doubt quite a few new roles for the shaping of law in modern society. The knowledgeable client approaching the lawyer with a well-prepared case is merely one example. Another one is the emerging consumers of legal information placing an emphasis on efficient access to legal information that meets the demands of data integrity, etc.

There is reason to believe that the digital divide – also within the legal domain – is here to stay, at least in the foreseeable future. This is not similar to saying that it should be disregarded, but rather the opposite. Awareness of the digital divide is in itself an imperative for attempts to control and manage it with a shared responsibility among national states, inter-governmental organisations, and commercial actors and last but not least among non-profit associations and individuals.

In addition to these broadly formulated reflections there lies a task for the legal community itself to revise the traditional doctrine of legal sources acknowledging new ICT-related steering mechanisms associated with, for instance, the use of computer programs and information standards for document management.

The other, possibly even more challenging task concerns the balancing of the traditional legal safeguards surrounding legal information in its conventional packaging in officially published rules and regulations, decided court cases, etc. against the need for practically oriented explanations of what the law is intended to mean. Maybe the time has come for intermediate law.