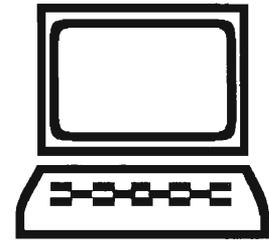


# Cyberlaw in South Africa



Leon Bekker, Pretoria Bar

LAWYERS, and even more so advocates, seem to have an unholy fear of everything technical. But, yes it is true, ever more personal computers are appearing on the desks of advocates. A local area network has been installed at both the Johannesburg and the Pretoria Bar. Instead of making a heavy capital outlay to purchase your own copy of Jutastat you can, if you practise at the Johannesburg or Pretoria Bar, join the local area network (for a still substantial initial capital outlay). One can then obtain the advantages of the *SA Law Reports*, the *Criminal Law Reports*, the *Appellate Division Reports* from 1910 to 1947, *The South African Statutes*, certain regulations, the *Income Tax Library*, *The Labour Law Library*, *Hortors Directory* and a strange database known as Sardijs. Sardijs, so I am informed by the introductory page thereto, "is a database that comprises annotated bibliographical references to the Southern African region, encompassing all shades of political opinion. It focuses mainly on political, economic and social aspects of the region, both as a geographical entity as well as its component countries – Angola, Botswana, Lesotho, Malawi, Mocembique [sic], Namibia, South Africa, Tanzania, Zambia and Zimbabwe". As you can see, this database is so up to date it includes the latest name for what we presently know as Mozambique.

That, to most advocates, is the extent of the cyberlaw that exists. But then there are the privileged few that venture out of the confines of the local area network to get their feet wet in the wide, open expanse of the cybersea of the Internet. The World Wide Web, is the place where those who are not suffi-

ciently acquainted with the niceties of the Unix computer language (which is the standard English of the Internet) can surf from website to website and wipe out on fantastic colourful graphics, sound clips and even video (if, at the moment, still in a primitive form). There, on the Internet, one will find web pages created by imaginative web page designers, exhorting web litigants to make use of the services offered by many of the law firms in the United States of America. In South Africa a few of the bigger law firms maintain a less assertive presence on the World Wide Web. They list the names of their partners or members, their qualifications and professed expertise. Telephone numbers, fax numbers and e-mail addresses are offered to those who are inspired by the all in one service which such a obviously well qualified and competent panel of experts can offer. The suspicion that only the senior typist in the firm knows how to retrieve the e-mail, remains speculation.



Leon Bekker

A quick look at the websites maintained by the Government of National Unity shows that it is only constitutional lawyers and parliamentarians who think it is important to tell the rest of the world what they are busy doing. The constitutional depository maintained by Wits law faculty publishes in electronic format, from time to time and as they are released, the judgements from the constitutional court. From the web page of the constitutional depository one finds links to many other sites throughout the world where information regarding the constitutions of other countries can be found and the decisions of their courts can be found. They also maintain a forum where interested persons may post messages relevant to constitutional issues. Debate between lawyers (and non-lawyers) often reaches an emotional level – as constitutional debate is wont to do. And ... once you have the equipment, it is all free – save for the cost of a telephone call to your Internet service provider which, in all of the bigger centres, should be a local call.

It is significant to note that the Department of Justice does not think that it is necessary to publish the important judgments of this country on the Internet. In fact, a disclaimer in the Wits constitutional depository explains that it is the Wits law faculty and not the Constitutional Court which publishes the judgments and maintains the constitutional web page. If one contrasts this with the Canadian Department of Justice who goes out of its way to make the law of that country available to all who have a modem and the necessary interest, one discerns a marked lack of enthusiasm for making the law available to the masses in our new democracy. But then, ►

one should not criticize the Department of Justice while the various bar associations in this country maintain a deathly silence about their existence on the Internet. One must remember that South Africa is becoming a more popular place to do business. It is becoming part of the international community. Where there is business there is litigation. Foreign legal practitioners whose clients may have to litigate in South Africa may not be aware of the role of the advocate in litigation here. Without trying to illicit briefs directly from foreign legal practitioners, I believe that the advocacy can only benefit from making the history of the bar and its place and purpose in the South African legal practice known on the Internet in an interesting, informative and attractive manner. A list of practising advocates who are members of the bar associations together with their telephone, fax and e-mail addresses should, in my view, be included and kept current.

The practice of law in cyberspace is no longer in the future. It is a reality. Documents need no longer be carried in physical form by messengers from person to person. They can be attached, in electronic format, to encrypted e-mail messages and transported via the telephone line to the client or attorney. Voluminous draft pleadings, contracts and opinions can, therefore, easily, be conveyed over long distances, received in an editable format, settled by counsel and sent back to the attorney without the arduous and time consuming task of retyping long, illegible faxes. This can only be to the benefit of the client who should get a better service at reduced fees. It is technically possible to exchange pleadings electronically and, if one can persuade the Department of Justice to wake up to the advantages, to file pleadings, notices and other documents with the registrar or the clerk of the court in electronic format. Filing would be automatic and

missing documents a thing of the past (until a power failure occurs!). The point is, banks rely almost exclusively on the electronic media for recording transactions and transferring billions of rand. They would not do it unless it was safe and reliable. The only question to be asked with regard to the filing of pleadings in electronic format is whether the advantages outweighs the cost of providing the infrastructure to make it possible. I do not know the answer but suggest that it must be worthwhile investigating.

In the meanwhile, I must sound a warning: the practitioner who does not familiarise her or himself with the electronic information system will soon find it more and more difficult to keep in touch with new developments in the law and in commerce. They may just remain one step behind those who make the effort to learn how to point and click a mouse to gain access to the world of cyberlaw.

### Justice...



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