

Digital content and the new consumer: what Radiohead, The Huffington Post and Perez Hilton can teach legal information professionals

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Damien MacRae

Founder, [Fee Fie Foe Firm](#)

Knowledge Consultant, Mallesons Stephen Jaques, Sydney

“No really, it’s up to you”

In June 1997, the British alternative rock band Radiohead released its third album, “OK Computer”, under the Parlophone and Capitol record labels. The album debuted at number one in the UK, was the eighth biggest selling CD of that year and it helped make Radiohead one of the biggest bands in the world.

Fast forward a decade to October 2007: Radiohead release their seventh studio album, “In Rainbows”. This time, however, they did something different. In fact they did two things differently. One, they released the album without a record label. Two, they released the album without a price. Instead, fans could download the album from the band’s website and pay whatever they liked. Including nothing. “It’s up to you” was the message at the checkout screen on the site. “No really, it’s up to you” was the next message. Later they made it available for sale in traditional formats, such as CD, CD-box set and LP. However, before it was available in shops, Radiohead had earned more money from the online sales of “In Rainbows” from their site than they had earned from their previous album, “Hail to the Thief”. In fact, Radiohead made more money from the online sales of “In Rainbows” than the total online sales from every one of their previous albums put together.¹

Seriously.

“Breaking” news

In May 2005, the syndicated columnist Arianna Huffington, with her business partners Kenneth Lerer and Jonah Peretti, launched *The Huffington Post*, a free liberal-leaning news and commentary aggregator. *The Huffington Post* features blog posts from political, academic and entertainment celebrities and provides news updates and links to a variety of external news sources and columnists. The site quickly picked up a readership thanks at first to the postings of its celebrity bloggers and its virulent anti-Bush stance. In fact, *The Huffington Post* picked up so much of an audience over the past four years that, in July of this year, it had more unique visitors than the BBC’s website.²

Seriously?

¹ Sean Michaels, [“In Rainbows outsells last two Radiohead albums”](#), *guardian.co.uk*, 16 October 2008.

² Nielsen Online as cited by Jennifer Saba, [“Top 30 news destination sites in July”](#), *Editor and Publisher*, 20 August 2009.

Also in 2005, a young graduate from NYU, Mario Armando Lavandeira, started a celebrity gossip blog called PageSixSixSix.com. The blog featured, among other things, the “outing” of alleged closeted celebrities and tabloid photographs doctored with Mario’s doodles and commentary. PageSixSixSix.com later became PerezHilton.com, named for Mario’s pseudonym, and is now one of the most visited sites on the web.³ This year *Forbes* magazine named Perez Hilton the most powerful person on the web.⁴ One magazine went so far as to claim that he was one of the 50 most influential men in America under the age of 45.⁵

Seriously??

What’s going on?

Lots of ones and zeroes.

What’s going on is the digital revolution. Specifically, the new tools being developed as a result of breakthroughs in digital storage, processing and dissemination. These tools are changing our relationship with knowledge (think Google, Google News, Google Everything), our relationship with business (eBay, Craigslist, Amazon.com), and our relationships with each other (email, instant messaging, Facebook, Twitter). These changes are re-writing the commercial realities for all businesses and nowhere is this more evident than in the music and newspaper industries. Fairly or unfairly, both have borne the full brunt of these changes, undergoing rapid and dramatic transformations that will have a permanent impact on the producers and consumers of these commodities. For a lot of people in these industries, the commercial outlook appears pretty bleak. However, there are some, such as Radiohead, Arianna Huffington and Perez Hilton, who are staying ahead of the curve and adapting to the new commercial realities successfully.

Many of us in other industries have watched these developments in the music and newspaper worlds closely in the knowledge that our own industries will eventually be similarly transformed. The music and newspaper industries can be seen as canaries in the coalmine not only for the entertainment industries in general (film, television, magazines, books, games, gambling, sports) but all industries – legal services included. We have started to witness some changes in our industry (think AustLII, JD Supra, Avvo, and my own site, Fee Fie Foe Firm) but we have yet to feel the full impact of the changes being wrought by digital technology. Lawyers are notoriously resistant to change, particularly technological change. This can often be a frustrating fact of life in our industry. However, in this instance it can be seen as a good thing as it provides us with the luxury of examining what has taken place in other industries and learning from their experiences.

So to that end, this paper looks at the changes that are occurring in the music and newspaper businesses and asks, what lessons are there for the legal information industry? What challenges and opportunities does the digital revolution present for legal information producers and consumers? How can our industry avoid the same mistakes many music and newspaper companies have made?

³ According to *Time.com*, PerezHilton.com records over 4 million hits per day: Clayton Neuman, [“The Time 100 are they worthy?: Perez Hilton \(Mario Lavandeira\)”](#), *Time.com*, 20 April 2007.

⁴ David M Ewalt, Michael Noer (ed), [“The web celeb 25”](#), *Forbes.com*, 29 January 2009.

⁵ [“The Details power 50”](#), *Style.com*.

Specifically, it provides a brief overview of what’s happening to the music and newspaper industries; examines why it’s happening; and outlines what I believe are the six key lessons legal information professionals can learn from the changes that have occurred.

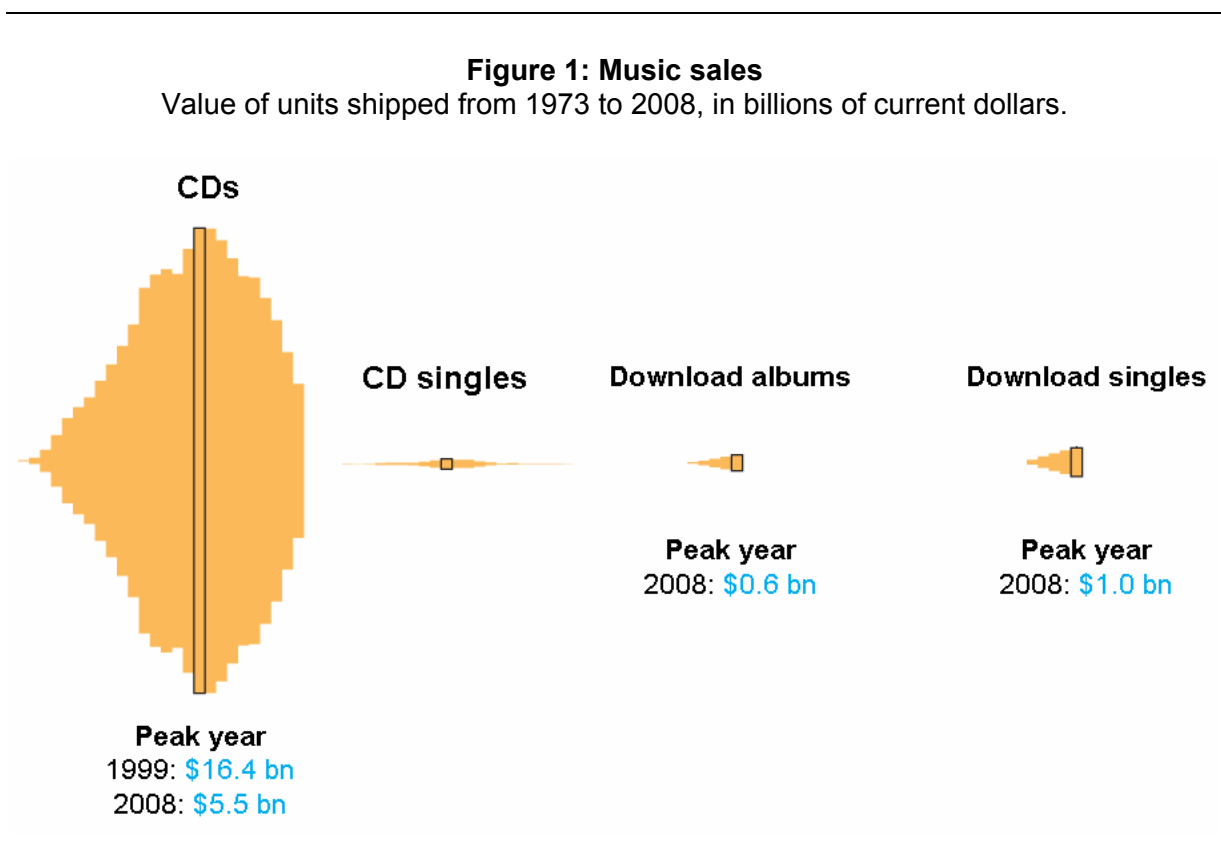
1. What’s happening?

An elegy for the music industry?

The music industry’s deathwatch kicked off about a decade ago, but it seems the vigil could soon be over. According to data from the Recording Industry Association of America, since music sales peaked in 1999, the value of those sales, after adjusting for inflation, has dropped by more than half. At that rate, the industry could be decimated before Madonna’s 60th birthday.

Charles M Blow, [“Swan songs?”](#), *NYTimes.com*, 31 July 2009

What’s happening to the music industry? Well, according to most commentators, it’s dying. Or at least, the music “business” side of the industry (record labels, retail music sellers and so on). Consider the following statistics for the US from *The New York Times* and the Record Industry Association of America (RIAA):⁶



Clearly, people are buying less CDs. *Significantly*, less CDs. Two-thirds fewer CDs than 1999 (the year that file-sharing service Napster was launched). We’re also buying more music online. But clearly the money being spent on downloaded albums and singles in no way replaces the dramatic loss of physical sales. At least not yet.

⁶ Charles M Blow, [“Swan songs?”](#), *NYTimes.com*, 31 July 2009.

It's fairly safe to assume that the popularity of music has not declined, although arguably some decline in the money spent on CDs and downloads could be attributable to the increase in popularity of other entertainment options such as video games. No, most commentators agree that the dramatic revenue decline is directly attributable to the boom in online file-sharing in the late 1990s and the "Noughties".⁷ Many people who would have otherwise spent money on certain songs and albums have instead found that they can download the same music for free, allowing them to save their money and spend it on something else (including, in some cases, but not many, other CDs).

Regardless, these sorts of sustained revenue declines have to have an impact on a business. And so it has been with the music industry, which has seen large-scale layoffs, music retailers being driven out of business, and record companies, producers, studios, recording engineers and musicians being forced to seek new strategies and business models.

One of the first things the music business tried to do to stem these losses was introduce digital rights management (DRM) for its CDs. DRM is simply technology used to prevent the copying of digital content, such as Sony BMG's Extended Copy Protection (ECP) system that aimed to prevent the "burning" or "ripping" of compact discs run on a computer. Unfortunately for the music business, that approach didn't work – literally, in many cases, as hackers quickly determined work-arounds that made the technology redundant in practical terms. It was also expensive to implement and there was a consumer backlash to many forms of DRM, such as the boycott of Sony BMG over its ECP system.⁸ More importantly, it did nothing to stop the revenue losses, as the statistics above attest to. Hence, EMI stopped publishing CDs with DRM in January 2007, stating that "the costs of DRM do not measure up to the results".⁹ Today, none of the four major record labels release CDs containing DRM.¹⁰

The other thing the music business did was to start suing (or threatening to sue) the people who were most likely to be responsible for the decline in revenues: those individuals or organisations that were sharing or facilitating the sharing of music online. The RIAA, for example, had filed over 17,000 suits by April 2006 against alleged file-sharers and were filing 700 to 750 additional suits per month.¹¹ Similar suits were launched across the world.¹²

Whether these lawsuits had an impact on stemming the industry's losses is a debate left to another forum. However, given the industry's own statistics above it is fair to say that at the very least, revenue declines have not (yet) ceased since the actions were instigated. In fact, the RIAA itself has changed strategy, instead, turning its attention to internet service

⁷ It is worth noting that there are some studies that deny a link between file-sharing and the loss of revenues, for example, TNO's recent study as reported in *techdirt*: Mike Masnick, "[Respected Dutch researchers note that piracy has a positive impact on the economy](#)", *techdirt*, 20 January 2009. I will work on the commonly-held assumption though that there is a link.

⁸ Apparently, the software involved in the ECP system left some consumer's computers vulnerable to viruses: see Stephen H Wildstrom, "[Rooting out Sony BMG's rootkit](#)", *Business Week*, 29 November 2005.

⁹ Editorial, "[Criminalising the consumer](#)", *The Economist*, 27 April 2007.

¹⁰ Catherine Holahan, "[Sony BMG plans to drop DRM](#)", *Business Week*, 4 January 2008.

¹¹ Jason Krause, "[Breaking up downloading](#)", *ABA Journal*, April 2006.

¹² According to the International Federation of the Phonographic Industry (IFPI) over 5500 legal actions had been launched against uploaders in 18 countries outside the US as of April 2006: IFPI, "[Illegal music file-sharers targeted by fresh wave of legal action](#)", 4 April 2006.

providers and asking them to cut off the internet access of those who illegally upload music repeatedly.¹³

While a good proportion of the music industry focussed on litigation and copy protection, others started looking for alternate business models. Some of the models being tested include:

- À la carte digital services such as iTunes that allow consumers to purchase and download one or more music tracks in any combination they like.
- Subscription services such as Spotify, (the new) Napster and Rhapsody that provide consumers with online access to music for an annual fee.
- Advertisement-based services such as Yahoo! Music and Pandora that provide consumers with free online access to music with advertisements.
- Selling the “secondary”/scarce products such as live performances, merchandise and limited edition art works.¹⁴
- 360 deals where the music industry company is more a promoter than owner of music, providing financial support for the artist, including funds for marketing, promotion and touring, in return for a percentage of all of their interests, including music sales, live performances and other income. Examples include LiveNation’s deals with Madonna, U2 and Jay-Z, and EMI’s deal with Robbie Williams in 2007.
- Manufacturing and distribution deals without marketing and promotion.

No one knows at this stage if any of this will work. But what is clear is that digital downloads are here to stay, the balance between artists, record companies and consumer has changed, and the industry will never look the same again.

An obituary for the newspaper industry?

The life expectancy of some papers may be measured not in years or decades, but in months or quarters. “It gives new meaning to the old joke, ‘What’s black and white and red all over?’” says Andrew Lipman, a media and telecom lawyer at Bingham McCutchen LLP. R-E-D, as in ink or maybe bloodshed, not R-E-A-D. Defunct may be too strong a word for the newspaper industry in the US, but dire probably is not.”

Chris Nolter, [“Black and white and red all over”](#), *TheDeal.com*, 23 January 2009

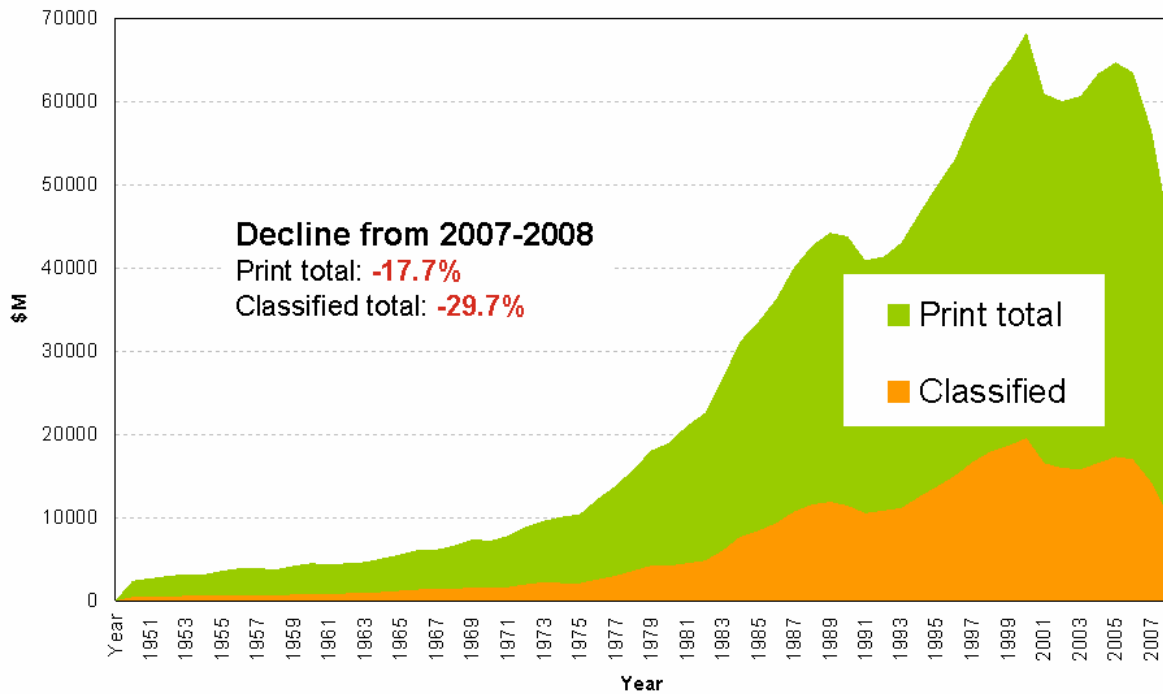
Things aren’t looking too much better for the newspaper industry. Consider the following graph based on numbers provided by the Newspaper Association of America:¹⁵

¹³ Sarah McBride and Ethan Smith, [“Music industry to abandon mass suits”](#), *Wall Street Journal*, 19 December 2008.

¹⁴ The British Phonographic Industry notes that live performances in the UK out-earned recorded music for the first time this year – £904m versus £896m: see [“Live and kicking”](#), *CNBC Business*, July 2009. Live music also appears to be going through a renaissance locally as well with ticketing agency receipts compiled by Live Performance Australia recording a 12% increase in revenue from 2006 to 2007: see Craig Mathieson, [“How the net saved live music”](#), *The Sydney Morning Herald*, 3 July 2009.

¹⁵ Newspaper Association of America, [“Advertising expenditures”](#), August 2009.

Figure 2: US newspaper revenues



Keeping in mind that news reporting is generally a loss leader for advertising, these statistics are a major concern for the newspaper industry. Since 2000 classified advertising revenues have almost halved, from \$US19.6 billion to \$US9.9 billion in 2008. In the same period total newspaper revenues have fallen from \$US48.6 billion to \$34.7 billion (a 28.6% drop). According to one study, Craigslist destroyed \$50-\$60m pa in newspaper classified advertising in the San Francisco Bay Area alone.¹⁶ Circulations are also declining in a big way: from a high in the US in 1990 of 124,963 to 97,712 in 2008 (a 22% decline).

Again, these sorts of sustained revenue declines have to have an impact on business. In the past year, a number of major metropolitan dailies have closed down, including *The Rocky Mountain News*, *Kentucky Post*, *Baltimore Examiner*, *Tucson Citizen*, *Cincinnati Post*, *Union City Register-Tribune*. Other major metropolitan dailies have gone online-only, such as the *Seattle Post-Intelligencer*, *Christian Science Monitor* and *Bay City Times*. In Detroit, both newspapers, *The Detroit Free Press* and *The Detroit News*, slashed home delivery to three days-a-week. *The Chicago Sun-Times* proposed outsourcing copyediting jobs to India or Canada. The Tribune Company, owner of *The Los Angeles Times* and *The Chicago Tribune*, is bankrupt, as is the Journal Register Company, the Minneapolis Star-Tribune, Philadelphia Newspapers LLC and Sun-Times Media Group. The *San Francisco Chronicle* may not last the year and *The New York Times'* debt has been downgraded to junk. Things are so bad there are websites dedicated to newspaper and magazine death watches.¹⁷ The US Congress

¹⁶ As cited by Pamela Parker in "[Study: Craigslist costs bay area newspapers \\$50m/year](#)", *ClickZ*, 27 December 2004.

¹⁷ See, for example, *Newspaper Death Watch*, <http://www.newspaperdeathwatch.com/> and *Magazine Death Pool*, <http://www.magazinedeathpool.com/>.

is also considering a bill that would allow newspaper companies to operate as non-profit corporations with tax breaks.¹⁸

2. Why is it happening?

In its simplest terms, the deterioration in the music and newspaper markets is due to the decrease in demand for certain products, namely CDs, newspapers and advertisements in newspapers. And as the demand for these products decreases, so does the profits of their suppliers.

So why is demand decreasing? Again, in its simple terms, demand is decreasing because of digital technology. More specifically, demand is decreasing as a direct result of the new tools becoming available as a result of developments in digital storage, processing and dissemination. These new tools have impacted demand for these goods in three ways:

- the price of substitute goods has decreased;
- the number of substitute goods has increased; and
- the price of complementary goods has decreased.

It's worth examining these factors more closely.

The price of substitute goods has decreased.

Let's start with CDs. CDs are now competing against digital files that are (fairly or unfairly) free to download or share. Digital files are perfect substitute goods for CDs, as long as you don't care about packaging. It must be said that a lot of people actually do like the touch and feel and look of CDs and their packaging and inserts. In fact it's an excellent example of the fetishisation of certain commodities; by owning the CD one can feel like you own a piece of the artist of music. If that's you, then you may still buy CDs and box sets. But most people are happy enough to have ready access to the music itself and for them digital files satisfy this need. And this need has been satisfied to a large extent for the last decade by uploaded files that have been placed online to share (quite easily) for free (legally or illegally – in most cases illegally). Putting to one side the legal and moral arguments about file-sharing and the efficacy of tactics to prevent file-sharing, the simple fact is that CDs have had to compete with these substitute goods over the last decade. And it's extremely difficult (if not impossible) to compete with free.

And this is why Radiohead tried their experiment/stunt.¹⁹ If consumers can get the music for nothing, why sell a CD? Sell the things that there are no perfect substitutes for such as live experiences. Why not use the music that will be distributed free anyway to sell merchandise? Radiohead eventually did sell CDs because a lot of people still want to buy CDs. Many people want to “own” a piece of the band. Many people don't have access to the internet. Many people don't know how to download files and if they do, don't want to download illegal copies. But, arguably, in the new market these sales may soon have to be seen as a bonus.

¹⁸ See the *Newspaper Revitalization Act of 2009*, HR 3602 and S 673.

¹⁹ Other famous examples of artists who have tried giving away their music recently include Prince, who gave away his album “Planet Earth” in copies of the British tabloid *The Mail*, and the Arctic Monkeys, who gave away tracks at their concerts.

The money Radiohead made from the online sales was also a “bonus” in another sense. The band say they were not receiving money for the digital sales of previous albums from their label – their pre-digital contracts didn’t account for these royalties.²⁰ But the band can now publish directly to their consumers and bypass the old middlemen and keep all the profits to themselves.

Newspapers are in the same position as CDs. Newspapers are competing against a plethora of news services online that are available to consumers for nothing. They’re competing against free services such as blogs and aggregators (like *The Huffington Post*). They’re competing against other free online newspapers and news broadcasters. They’re also competing against themselves as most major newspapers have online version available for free. Newspapers’ primary profit centre, classifieds, are also competing against free services such as Craigslist, eBay, Seek.com and RSVP.com.

And most of these tools, do their job better than newspapers ever did. Why advertise for a partner in a newspaper when you can get online and find hundreds of potential mates in seconds, filtered for your likes and dislikes? Consider *The Huffington Post*. It isn’t just a newspaper – it’s a news aggregator with editors who look for the best stories online, saving readers time browsing multiple newspapers. Blogs can be more interesting than newspapers too because they provide something to their writers that newspapers don’t: full editorial control. That’s one of the reasons why Perez Hilton is so successful. Without an editor he’s been able to say things most mainstream newspapers could only dream of saying. When you take that into account, along with the fact that these new services cost nothing, it’s no wonder newspapers are struggling.

The number of substitute goods has increased.

The hurt doesn’t stop at free competitors for newspapers and CDs. A key factor in the decrease in demand for these commodities is the fact that digital technology, and the internet in particular, has increased the number of substitute goods available to most consumers. As we all know, today, anyone with a computer and access to the internet can publish and distribute content. This has opened up a whole world of substitutes for CDs and newspapers, figuratively and literally. The local supplier must now compete not only with new players in the local market but also against suppliers from around the world.

Think of newspapers. Previously, a major city daily such as *The Sydney Morning Herald* (SMH) simply had to compete against local dailies. In the SMH’s case, it competes against *The Daily Telegraph*, *The Australian Financial Review* and *The Australian* and previously, *The Daily Mirror* and *The Sun*. Now it has to compete against:

- other local online dailies such as itself (*smh.com.au*), *News.com.au*, *AFR.com*, *Crikey*, *Business Spectator*, *Yahoo7*, *NineMSN*, etc;
- other online versions of Australian newspapers such as *The Age* and *The Courier Mail*;
- online newspapers from around the world such as *The New York Times*, *The Guardian*, *The Washington Post*, etc;

²⁰ As Radiohead’s lead singer Thom Yorke says: “It’s partly due to the fact that EMI wasn’t giving us any money for digital sales. All the contracts signed in a certain era have none of that stuff.”: [“David Byrne and Thom Yorke on the real value of music”](#), *Wired*, 18 December 2007.

- news aggregators such as *The Huffington Post*, *The Daily Beast*, *The Drudge Report*, *Google News* and personal aggregators such as iGoogle and RSS readers; and
- non-journalists who focus on providing meaning to news such as bloggers (for example, *The Daily Reckoning*) and even law firm bulletins that used to be the province of corporate GCs but are now accessible to everyone within one online search.

Newspapers are also at an added disadvantage: digital technology is changing the definition of what “news” is. Newspapers now publish “aged news”.²¹ By the time you pick up a morning newspaper, you could have read all about the vast majority of stories online hours previously. Online news is faster in getting you the news. Blogs are faster still. And Twitter is even faster still. It’s harder for a morning newspaper to compete for eyeballs in this new 24-hour news world.

CDs are also facing more competition. Obviously, they’re facing competition from online music files. They’re also competing against music from around the world that consumers hitherto did not have access to, such as artists from other countries that do not have Australian distribution deals and obscure recordings of your favourite artists.

They’re also competing against themselves. Consider again the statistics in Figure 1. When all we had were CDs, we bought albums. But now that we can pick and choose individual tracks from albums via services such as iTunes, we buy more singles than albums. CD albums now have to compete against the “pick ‘n’ mix” options online. Tellingly, Radiohead have indicated they may even stop making albums. The concept of the “album” was born out of the media on which it was originally delivered (vinyl, cassette, CD) and the data limits imposed by them. Albums allowed record labels to bundle and sell more less popular songs. Now that consumers can choose individual tracks without regard to an artist’s or record label’s bundling decisions, the concept of the an album is diminished. Consumers can create their own collections of songs. There are still good creative and economic reasons to bundle songs – there are just more options available to artists, record labels and, more significantly, consumers in those bundling choices.

The price of complementary goods has decreased.

Most significantly, and the factor that has led directly to the increase in the number of substitute goods and the decrease in the price of substitute goods, is the fact that the price of complementary goods of the substitutes has decreased. In plain speak, the price of desktop computers, laptops, netbooks, internet-enabled mobile phones, portable music players and so on has plummeted. This means that this new technology is available to a lot more people, opening up the market, not just on the demand-side (consumers have more consumption choices) but the supply-side as well (think of all the new players in the music and newspaper industries).

3. What lessons can we learn?

There is a lot we can learn from the music and newspaper industries’ experiences with digital technology. It’s important to keep in mind that the technology is moving so fast that the

²¹ For a humorous but telling take on the concept of “aged news” see Jason Jones, [“End times”](#), *The Daily Show*, 10 June 2009.

market is changing almost daily. However, I think there are six key lessons we as legal information professionals can take from these experiences.

Lesson #1: The customer is always right.

It's a rule businesses large and small used to live by. It's perhaps time to remind ourselves of the importance of this invaluable truism. Whether you like it or not, the customer *is* always right.

If there's a better, cheaper, more convenient product then consumers will want that over a more expensive, less convenient product. That is just rational behaviour. If you're not selling that cheaper, more convenient product then consumers will go elsewhere – even if it's illegal, as is the case with a lot of music downloads. And the only loser is you.

Even the CEO of Warner Music Group, Edgar Bronfman, who was one of the first to declare war on illegal file-sharing, has admitted as much.²²

“By standing still, or moving at a glacial pace, we inadvertently went to war with consumers by denying them what they wanted and could otherwise find. As a result, of course, consumers won.”

So if you're producing the more expensive, less convenient product, you have two options if you want to stay in the game:

- 1 make a better product; or
- 2 sell something else.

It's that simple. If the customer doesn't want what you're selling, then you have to change what you're selling. Unfortunately, in the digital age, litigation (fairly or unfairly) is not a business model. By the time you sue people and you try to change laws (or, at least, succeed in doing so), the market has probably moved on.

So, you need to improve your product to give consumers what they want or sell something else.

That's what Radiohead did in their experiment. They started selling their brand, not CDs.

That's why services such as iTunes and Spotify have turned up in the market offering attractive legal alternatives to piracy.²³

That's why *The New York Times* has created *Times Extra*, an experiment in news “curation” to match the efforts of aggregators such as *The Huffington Post*. *Times Extra* is essentially an online version of the newspaper that includes recommendations of alternate quality articles from other online news services.

²² As quoted in Cade Metz, [“Warner music supremo in Apple-fondling mea culpa”](#), *The Register*, 16 November 2007.

²³ *The Economist* makes the same point in [“How to sink pirates”](#), *The Economist*, 12 November 2009.

Another example is Fox News who have created *The Fox Nation*, a website that is probably best described as a right wing *Huffington Post*, curating the web for news stories of a particular political bent.

Even Mariah Carey has started selling something new too: her audience. She released her new CD with advertising in the form of a special copy of *Elle* magazine that features advertisements from aspirational upscale brands like Elizabeth Arden.²⁴

“The idea was really simple thinking: “We sell millions of records, so you should advertise with us,” said Antonio ‘L.A.’ Reid, chairman, Island Def Jam Music Group, a unit of Universal Music Group. ‘My artists have substantial circulation when you sell 2 million, 5 million, 8 million, that’s a lot of eyeballs. Most magazines aren’t as successful as those records.’”

This is a fantastic example of leveraging the assets you have to sell something new.

Now, let’s look at the legal information industry.

Legal information publishers

Consider the main products legal publishers currently sell:

- report series
- case citators
- legislation
- textbooks
- journals
- newspapers and magazines; and
- forms and precedents.

Let’s take report series. Most courts and decision-making bodies are self-publishing these days, providing their decisions online for free. And this is as it should be, as the courts (and the common law produced as a result) are a common good owned and paid for by the taxpayer. They’re something everyone should have free and ready access to and now, thanks to digital technology, we do, meaning that the market for traditional hard copy report series is slowly disappearing. Sure, there is still some value in filtering the most important decisions in a subject area or jurisdiction. However, I suspect that unless the commercial publishers start offering additional value-adds that justify the prices they require to cover the costs of production, we will slowly be saying goodbye to a lot of these series.

What about case citators? Case citators are an almost essential entry point into the chaos of the raw common law. However, they have traditionally been expensive to produce and expensive to buy. But now that we have access to free online case law databases that are fully searchable, the need for citators is diminishing. Then there are initiatives such as AustLII’s LawCite which is a free, automated citator that is in many respects the equal of or better than the human-edited versions. It won’t be long until web 2.0 technology (for instance, in the form of RSS feeds and dynamic tagging) is applied to decisions as a matter of course.

²⁴ Becky Ebenkamp, Brandweek, [“Mariah’s ‘Memoirs’ CD to include mini-magazine with ads”](#), *Billboard.com*, 3 August 2009.

Commercial publishers will need to improve their offerings in order to continue competing with options such as these.

In terms of legislation, again, most jurisdictions make legislative and executive instruments online for free, and if they currently don't, it's only a matter of time till they do. What's more, most of it is "authorised" (in the sense that it is able to be adduced as evidence in court) and it's often available in better formats (such as PDF). As technology improves and is applied to these public offerings, the few value-adds publishers can offer to their legislative services become less able to justify the price they need to charge to make them commercially viable.

As for textbooks, it could well be that cash-strapped universities will rely more and more on internal resources such as wikis to offer better and cheaper options for similarly cash-strapped students. Larger law firms are also working with wikis, which may reduce their dependence on external texts to a small but significant extent. It's also only a matter of time before university academics, law firms and younger lawyers wanting to make a name for themselves start focussing entirely on self-publishing online, by-passing the traditional formats and publishers. Publishers may need to bolster their distribution networks to stay in the game.

With law journals, the truth is that blogs and law firm websites reach their audiences faster with a lot of the same information. True, there is value in formalised peer-review, however, the ability for an audience to comment on and provide continuous feedback to works online, undermines the need for the old forms of review. Again, universities and lawyers will also increasingly self-publish (they write the majority of content anyway) using blogs platforms and online news aggregators to distribute their content. With publishers facing ever-rising production and distribution costs with decreasing demand, the future looks bleak for traditional hard copy journals as well.

Similarly, print editions of legal newspapers and magazines are becoming unacceptably expensive and dated, and online versions may find it difficult to hit upon a business model that delivers familiar profit levels (although, arguably, they do have a certain amount of leverage over advertisers given their niche audience).

The traditional sale of forms and precedents encyclopaedias as well are likely to be challenged by free online document-sharing platforms such as DocStoc and JD Supra, and new online pay-per-form providers.

Put simply, there are better and cheaper options becoming available for legal consumers, so legal information publishers need to start changing their products or start selling something else. I would ask, where's the iTunes for legal information?

This might seem unfair to some but publishers have historically been in a privileged oligopolistic position for no reason but the fact that the medium during that period allowed it. The new mediums don't allow it.

So, how about lawyers?

Legal services providers

It's hard to imagine that the demand for legal advice and representation will disappear any time soon. However, the demand for cheaper and more timely advice will intensify.

In the future, consumers will have more alternatives to choose from. For one, consumers have more access to information with which to compare legal service providers. Consider websites such as Avvo that allow consumers to comment on the quality of individual lawyers, and Fee Fie Foe Firm, that allows consumers to find experts quickly by running searches across law firm marketing (ie their websites). In a sense, the need to rely on personal recommendations alone is disappearing fast.

In addition, off-shoring is becoming a more viable practical prospect for certain large-scale legal consumers. Digital technology allows practitioners in one country to offer reasonably equivalent services in other countries. This opens up the market significantly, leading to increased competition for certain large-scale services and inevitably cheaper prices for consumers. Consumers are in the driver's seat in this global legal market and many legal service providers will need to improve their offerings in order to compete more effectively.

Lawyers are also faced with a world where more free primary and secondary legal information is available online, from governments, voluntary organisations and for-profit legal service providers. Richard Susskind, in his book *The End of Lawyers?*, talks about in-house legal departments cutting costs by forming communities and sharing knowledge, using online social networking sites and collaborative websites such as wikis.²⁵ He provides an example of nine investment banks and five major law firms in the UK that formed the Banking Legal Technology Group to develop a single knowledge portal for these clients that includes articles, checklists, guides, case summaries, updates and precedents. He also notes that in-house counsel in the US have launched Legal OnRamp, a collaborative project to share legal knowledge. This greater accessibility to legal knowledge may mean reduced demand for certain (basic) legal services. It may also lead to higher demand for high-level, specialist work as legal literacy improves. Lawyers will need to quickly adapt (something they're not generally used to) to the waxing and waning of demand for certain services.

Lawyers also face new technological substitutes. No one is suggesting that robots will replace lawyers (yet) but new automated programs will make a lot of the routine, low-end, repetitive work redundant. And if they match the quality of service previously provided manually then consumers are going to demand and expect those solutions for the simple fact that they will help reduce costs.

This raises the main issue for lawyers (and any service provider): consumer expectations change as technology changes and new tools appear. Clients have always wanted more for less but digital technology only intensifies the call. They will look for more value-adds such as hybrid advice that may include, for instance, project management and risk management services and advice. They will look for cheaper solutions driven by technological efficiencies. They will look for more comprehensive solutions – knowledge systems supported by legal professionals. Susskind, again, gives the example of Deloitte's who created tax software that is now used by 70 of the top 100 companies worldwide and requires teams of tax professionals to maintain and update. These are the solutions that corporate clients will increasingly demand. Clients will also demand quicker solutions as the notion of what "timely" advice is changes. And the bottom line is that those law firms that adapt technology to get better advice out faster will win more work.

²⁵ Richard Susskind, *The End of Lawyers?: Rethinking the Nature of Legal Services*, 2008, OUP

Law librarians and other legal knowledge professionals

Historically, we provide administration, organisation and access to legal books. Now we have to provide administration, organisation and access to the online world. This is what our clients (lawyers and other legal consumers) expect. This means that our skill-set must change, something a lot of us are already doing. Increasingly, we need to focus on database management, web design and usability, training, and working more closely with legal and technology staff to develop holistic solutions for clients.

Lesson #2: Build your brand

Branding has always been important. However, the nature of digital technology has made it more important than ever. Consumers use branding to make sense of the chaos of the online world as branding is simply a shorthand for trust. If I see a name/face/logo I've seen before, I'll pay tend to pay more attention to it than others, particularly if I've obtained value from that brand previously. So, for example, when I'm online I pay attention to articles written by people whose opinions I've come to respect and will often seek them out.²⁶ When I've run a search on Google News for articles on a topic and I'm presented with multiple source options I will click on the articles from newspapers whose "brand" I prefer. This is rational behaviour.

The good news though is that in no time in history has it been easier to start establishing a brand quickly. Think of Perez Hilton. Perez Hilton was, frankly, a nobody who started a blog pretty much straight out of college. He didn't write for a newspaper or a magazine or report for a TV station. A *Hollywood Reporter* or *Entertainment Tonight* or *People* magazine would likely not have let him say the sorts of things he wanted to say. But he didn't need them. The world is your audience with the internet. He created PerezHilton.com after one successful earlier blog and quickly became "the" source for Hollywood gossip.

What Perez did was use the power of microcelebrity. A microcelebrity is simply someone who is famous to a small/niche group of strangers. They have in some way captured a group of people's attention and through their actions generated interest and trust. In Perez's case, that small group of strangers happened to be the celebrity-obsessed, including media opinion-makers, which meant that he soon went from micro-celebrity to celebrity. But anyone can be a microcelebrity in the digital age. The best and latest example of this is Twitter. When you start following people and they start following you, your image or brand will start appearing in your follower's Twitter-feeds. If what you talk about is of interest or value to those people, they then start paying attention to your tweets when your image or brand pops up in the feed. As people retweet your messages you can quickly become "known" to potentially thousands of strangers you would never have otherwise met. In time, you can then take a quasi-celebrity status in your niche area (as someone people "know" but don't "know").

Facebook can do the same thing. Blogs, LinkedIn, MySpace, Bebo can as well. Anyone with access to the internet and something valuable to say can become a "digital socialite" (someone well-known and revered in the online world). If you find someone writing in your niche area that you like, you don't care whether they're from *The New York Times* or Nowheresville, as long as you get a value from it.

²⁶ Interestingly, Google News now highlights the name of the author of each article in its results, arguably more prominently than the publication's name. This presents an excellent opportunity for journalists and commentators to build their individual brand in conjunction with their publisher's.

The good thing is, anyone can do this: law firms, lawyers, academics, law librarians, anyone. And we used to be good at this. Think of *Halsbury's Laws of Australia*, *Chitty on Contracts*, *McGregor on Damages*, *Miller's Annotated Trade Practices Act*, *Ford's Principles of Corporations Law*. Now that's brand building. It's good for the publisher and it's good for the lawyer's reputation. Those names are linked inextricably with their expertise. Young lawyers, academics, knowledge professionals wanting to make a name for themselves should be out there writing online. You don't need a big publisher to get your name out there anymore. The rules change as the technology changes and it's up to us to take advantage of the new playing field for our own careers.

Lesson #3: The middleman hasn't disappeared – we just need different middlemen.

For Radiohead, their record label was their middleman and they took a hefty slice of their profits. So they dumped them and used the internet to engage with their audience. Perez Hilton didn't need a newspaper to reach his audience either. Again, he used the internet to speak directly to them.

But that doesn't mean they don't need middlemen. They need someone to design their website, to host their website, to keep it up-to-date, to manage other traditional activities such as touring, publicity and media management. There is still a demand for different types of middlemen.

The Huffington Post is a new type of middleman for authors who want to express an opinion and reach a broader (progressive) audience. They're also a middleman for newspapers helping drive audiences to their sites by "advertising" the existence of their articles to *The Huffington Post's* audience.

In our arena, law librarians are becoming entrenched as the middlemen between lawyers and legal information. Without assistance from a librarian, researcher or other knowledge professional, many lawyers would have difficulty finding quickly the relevant material for their needs.

Businesses such as Lexology, Linex Legal and Mondaq have popped up in the last few years to serve as new middleman between law firms and potential clients by bundling related law firm commentary together and delivering it to a wider audience of potential clients.

We have to continue asking ourselves, how can we be the new middleman?

Lesson #4: Break down the walls.

Building a wall between your commercial offerings and your consumers (or potential consumers) is an ineffectual strategy in the new global digital market. It can only work if you have no substitutes. And even then, by building a wall you are limiting your potential consumer base.

Take the online subscription model favoured by some newspapers such as *The Australian Financial Review* (AFR) and *The Wall Street Journal* (WSJ) where users are forced to subscribe to access articles. These are publications with high quality writers and commentary. Nevertheless a significant proportion of the articles therein have satisfactory

equivalents in other high quality online news publications, most of which appear in news aggregators such as Google News. Given the choice, most consumers are going to (quite rationally) choose the free alternative. The other unique offerings are also often not finding an audience because they are being kept entirely behind a subscription wall. For instance, AFR articles do not (currently) appear in Google News or other public search engines or aggregators. This means they're virtually invisible to their potential market. Newspaper proprietors can complain all they like about aggregators "stealing" their content, however, the simple facts are: (1) it is (apparently) legal for aggregators to extract headlines like they do; (2) they can stop the aggregators from including their articles with a simple line of code placed on their websites; but (3) by stopping them they lose an economically significant portion of traffic being driven to their sites to view advertisements. Yes, unfortunately, many newspapers will not survive on an online advertising model only. But arguably, there is now an oversupply of news providers in this new global market. A simple search on Google News on virtually any topic will confirm this.

No one will buy your product if they don't know about it. At the very least you need a "freemium" business model to give people a taste of what you provide. "Freemium" is where you provide basic information for free but you pay for premium information. The best examples of this are the academic medical publishers who let Google index their databases so that their articles appear in Google Scholar. Running a search on Google Scholar allows you to find these quality articles without having to pay monstrous subscription prices. Google Scholar will provide a link which will take you to an abstract with an option to pay a small(er) cost to view the entire individual article without having to subscribe.

I would ask: why can't I get hits for *Halsbury's Laws of Australia* in Google Scholar or Google? Better yet, where's the pay-per-view site for *Halsbury's*? By not allowing Google to index their sites, many legal publishers are missing out on a huge potential market for legal information: non-lawyers. What do they care whether the person who demands their information has a degree or not? The internet allows you to distribute information to everyone who wants the information. Why not use it?

Lesson #5: Think small.

Digitisation has been a great leveller. Virtually anyone can now put up a webpage, start a blog or make a video and have it seen by thousands and millions of people across the world. Much of the technology required to undertake these tasks are either free or relatively inexpensive. In the past you needed backing from a record label or a newspaper conglomerate or a movie studio to have your message reach a mass market. But not any more. Examples abound of little guys building careers utilising new digital tools, from Perez Hilton and The Arctic Monkeys, to Arianna Huffington and Markos Moulitsas of the *Daily Kos* fame.

The medium actually encourages it. By the time a large company has argued the pros and cons of a business idea, a dozen small operators have probably already set up websites based on the same idea. By being small, a business owner has more flexibility to move fast. By being small, costs are lower and your return on investment can be greater. By being small, Perez Hilton had more control and could say anything on his blog. I thought small myself and placed Fee Fie Foe Firm online in my spare time and now I get thousands of visitors from around the world.

If you want to be the author of the leading textbook you don't need to go and pitch your ideas to a publisher anymore. Self-publish and have them come knocking on your door. If you have an idea for a new website, get online and create it yourself and have the big guys come to you.²⁷

Lesson #6: Past performance is no guarantee of future success.

Finally, and this is probably the hardest lesson for most people to accept: industries change and industries disappear. No business has a god-given right to continued future profits for all time. No industry has been ordained to last forever. Remember pagers? Remember VCRs? We might get used to an industry and get quite attached to different aspects of it (like the smell and feel of a crisp morning newspaper or the sound of a needle hitting an LP), but that in itself does not guarantee demand and a future consistent stream of revenue. If something better comes along that (most) consumers prefer, the economics of your business will inevitably change.

The music and newspaper industries had a great run in the 20th century. They owe their success, however, to the current state of technology at that point in time. They got lucky. The players in the industries were born at the right time, starting their careers at the right time. Those that were successful took advantage of the historically unique opportunities the technology of that era provided. But as soon as the technology is superseded by new tools that are better quality or more convenient or provide a better user-experience, then the consumer and his or her dollar moves on. And new players are born.

The music industry for one, should have known better. They had survived the decreased demand for LPs and cassettes. Only a fool would have thought that CDs were the last best technology for the distribution of music.

Business leaders need to regain a little historical perspective. Industries don't die by surprise and no industry deserves to last forever. We can't assume that ours does.

²⁷ Seth Godin talks a lot about this, see for example, [“Small is the new big”](#), Seth Godin's Blog, 5 June 2005.