

## **Privacy, confidentiality and online legal research – towards appropriate practices and principles**

**Michael Green, Barrister and Founder JADE ([michael.green@stjames.net.au](mailto:michael.green@stjames.net.au))**

As information moves to digital-only access and as libraries shrink their paper collections, legal professionals are forced to perform their research online. These users take for granted their privacy and the protection of their clients' confidentiality. Recent developments show cause for concern.

The paper argues that the privacy and confidentiality considerations arising from online legal research are more acute than those arising from the use of general search engines and give rise to some fundamental issues about access to justice and personal freedoms.

Providers of legal research platforms should formulate and implement consistent and explicit industry-wide measures (both disclosure and technical practices) which enhance privacy and confidentiality for every aspect of a user's encounter – from the communication with the platform, through to the information collected, and if collected, the manner in which it is stored and subsequently used, and a user's entitlement to some kind of review.

After considering some prototypical users of these systems and the contexts in which they perform research, this paper recommends appropriate practices and principles to address their various privacy and confidentiality requirements.

While adopting an international perspective, this paper considers appropriate extensions to the Australian Privacy Principles (APPs) to take into account the particular needs of those performing legal research. As to issues of confidentiality, the paper surveys the guidance provided by various Bar Associations and Law Societies as to the use and storage of client materials in the digital environment.

~~~~~

Draft as at 23 July 2015