



# ***Common Open Standards for “Precedents”***

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# The context

- Consensus
- Recognized benefits:
  - Reduction in publication time;
  - broader dissemination;
  - lower costs of reproduction, distribution and storage;
- Lack of uniformity
- Changing paradigm
  - What is published?
  - How it is presented?
  - Who reads it?



# Standardization - Experiences from Southern Africa and SAFLII

- First generation: lack of standards and consistency
- Catching-up:
  - guidelines for the preparation and styling of judgments in the electronic environment
  - Referencing mechanisms: Medium Neutral Citation and paragraphing
  - Consolidation
  - File-naming for internal case management
  - Handling of corrections



# The Second Generation

- Standardization based on labels
- Eased publication through automation
- Drawbacks:
  - Judgments forced into uniformity
  - Little to no automation of judgment preparation
  - No error minimization
  - Difficulty in complying with privacy laws
  - Search systems based entirely on full text
  - No provision for traditional legal finding tools
  - No facilities for handling of corrigenda



# The Third Generation - A Common Open Standard for Precedents

- XML documents are strategic for:
  - the courts system and judges:
    - providing tools and services supporting workflow from drafting to dissemination
    - ensuring valid representation, interoperability and increased accessibility
    - resulting in efficiency and responsiveness of the justice system
  - the users of legal information (citizens, enterprises and legal professionals)
    - Understanding of structured judgments
    - Using an online query system based on life-event approach with efficient search facilities and built-in comparison and analysis tools
    - Allowing for comparative research into national, regional and international precedents



# A Common Open Standard for Precedents (2)

- The common standard for precedents will encompass:
  - **Harmonisation of the structure of precedents**
  - **Metadata**
  - **Citation**
  - **Consolidation**
- Preserving the operational independence of the judges



# XML Standard for precedents (1/2)

## ***Metadata model:***

- each actor in the workflow-chain can annotate with its specific metadata the document
- Semantic classification of the document and fragment of text

## ***Unique naming convention:***

- URI for the citations between different sources: other precedents, jurisprudence, legislation, regulation, foreign case-law, doctrine, book, article, etc.
- URI for multimedia object: video, audio, etc.
- URI for annexes to the case-law: other documents of the trial



# XML Standard for precedents (2/2)

***Unique standard*** for any:

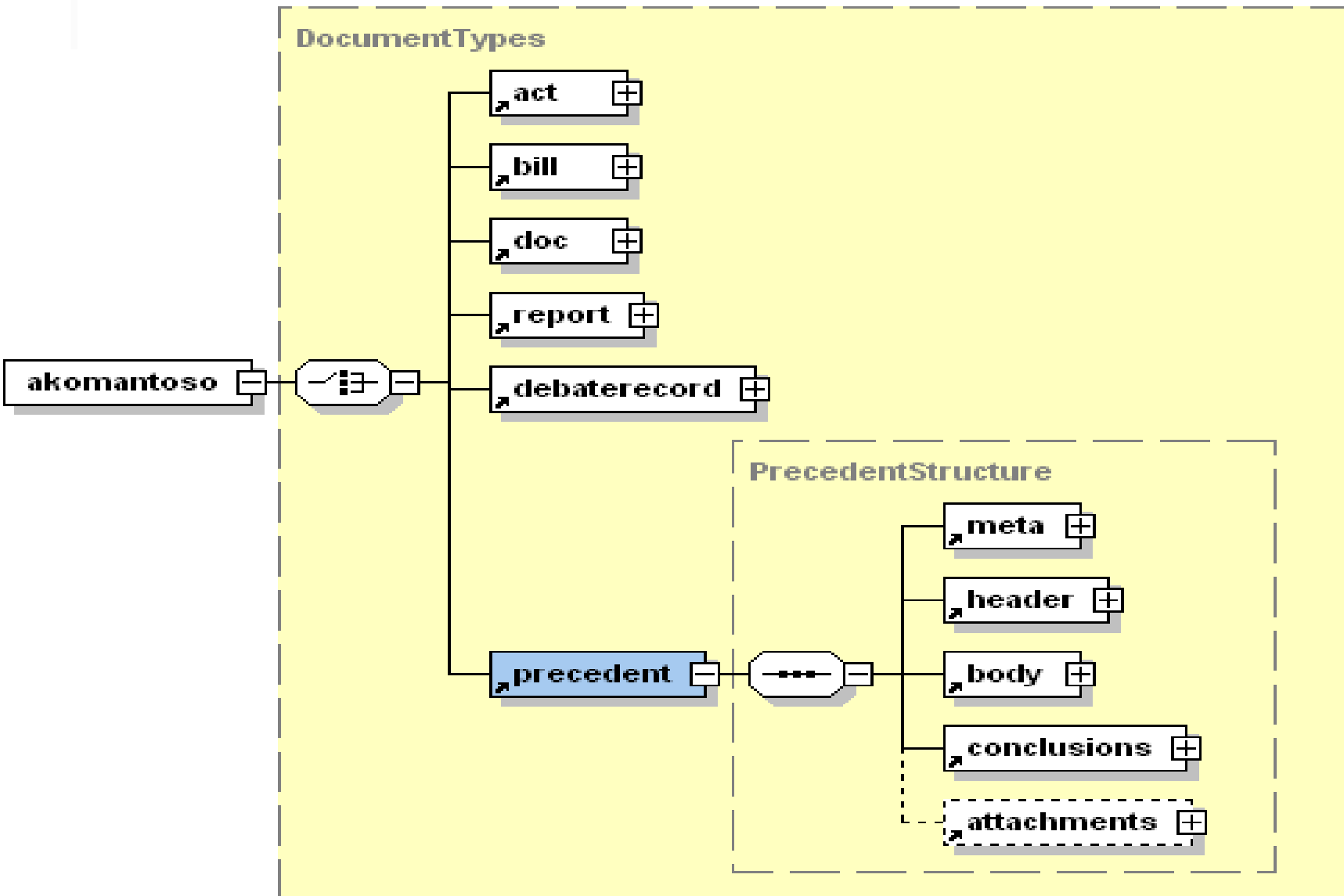
- ***type of court***: African International courts or supra-order court (ACHPR, ACJ, etc.), supreme court, high court, constitutional court, federal court, etc.
- ***level of judgment***: first order, appeal, etc.
- ***nature of case***: civil, penal, administrative
- ***judiciary system tradition***: common and civil law

***Document model***:

- the ***document*** is the center of the representation
- ***descriptive*** approach rather than prescriptive



# Akoma Ntoso for precedents



# Header



## THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

- Type of court Reportable
- Name and place of court CASE NO: 118/05
- Number and name of case
- Parties Appellant
- Names of Judges (Coram)
- Dates: delivery, hearing, publication, registration, etc. First Respondent
- Neutral citation: URI Second Respondent
- Summary/Abstract Third Respondent

In the matter between :

**HAUPT, ANTON CHARL t/a SOFTCOPY**

and

**BREWERS MARKETING INTELLIGENCE (PTY)  
LIMITED**

**BREWER, CHRISTOPHER JOHN**

**COETZEE, BYRON**

Before: **HARMS, STREICHER, MTHIYANE, CLOETE & LEWIS JJA**

Heard: **15 FEBRUARY 2006**

Delivered: **29 MARCH 2006**

Summary: **Copyright – ‘computer generated’ need not produce correct results – improved work eligible for copyright if original – databases and database structures not computer programs – computer generated work only if no human author – creativity not a requirement of originality – control over the making of a computer program.**

Neutral citation: **This judgment may be referred to as Haupt v Brewers Marketing Intelligence (Pty) Ltd [2006] SCA 39 (RSA)**

**J U D G M E N T**

# Body

## Structure Type:

- Hierarchy
- List
- Block
- Multimedia object

### STREICHER JA:

[1] Anton Haupt, the appellant, applied to the Cape High Court for an order interdicting the respondents in terms of the Copyright Act 98 of 1978 from infringing his alleged copyright in a computer program known as Data Explorer and also in certain tables (or database structures) and databases. The High Court held that Haupt's claim could not be sustained and dismissed the application. With the leave of this court Haupt now appeals against the High Court's judgment.

[2] Haupt and the second respondent, Christopher Brewer, are brothers-in-law. Brewer used to be the managing director and Haupt the marketing director of Brewer's Almanac (Pty) Ltd ("Brewer's Almanac"). Brewer's Almanac did business as an advertising agency and also disseminated information of use to the advertising industry.

[3] During 1998 the third respondent, Coetzee, was requested by Brewer's Almanac to write a computer program which could interrogate and manipulate what is known as AMPS (All Media Products Survey) data. AMPS data are research results produced by a media research company on behalf of the South African Advertising Research Foundation. AMPS data are based on market surveys done on a six-monthly basis by way of questionnaires and are available in binary column electronic format stored in a UFL file and captured on a compact disc. They enable one to determine, inter alia, who the readers, listeners or viewers of particular newspapers, magazines, radio stations or television programs are and who the users of various products are. The information is useful especially to advertising agencies in the planning of marketing strategies.

# Body

## Include:

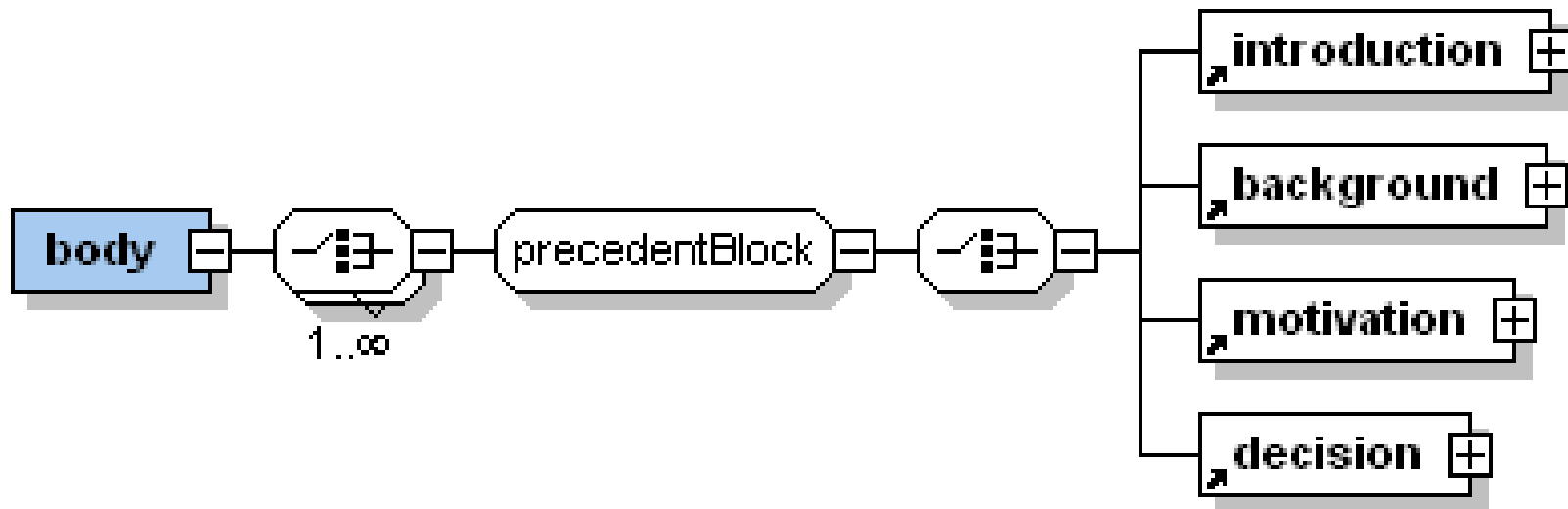
- Citations
- Quoted text
- Notes

[24] The High Court was apparently of the view that Haupt could not acquire copyright in the Data Explorer program inasmuch as the program was an improvement and refinement of the Project AMPS program. It erred in this regard. If a work is eligible for copyright an improvement or refinement of that work would similarly be eligible for copyright, even if the improved work involved an infringement of copyright in the original work, if it satisfies the requirement of originality.<sup>2</sup> That will only be the case if the improvement or refinement is not superficial. The alteration to the original work must be substantial.<sup>3</sup> See in this regard *Interlego A G v Tyco Industries Inc* [1989] AC 217 (PC) at 263 where the Privy Council said in respect of an alteration to an artistic work:

‘There must in addition be some element of material alteration or embellishment which suffices to make the totality of the work an original work. Of course, even a relatively small alteration or addition quantitatively may, if material, suffice to convert that which is substantially copied from an earlier work into an original work. Whether it does so or not is a question of degree having regard to the quality rather than the quantity of the addition. But copying, per se, however much skill or labour may be devoted to the process, cannot make an original work.’

# Body

- Introduction: the summary of the case
- Background: the description of the fact
- Motivation: the judge argumentation
- Decision: judges decisions and final order



# Decision & Conclusion

- Decision

- Conclusions

- Signatures
- Date
- Place

[51] In the result the following order is made:

- 1 The appeal is upheld with costs, including the costs of two counsel.
- 2 The order by the High Court is set aside and replaced with the following order:
  - \*1 The respondents are interdicted from infringing the applicant's copyright in its computer program known as "Data Explorer".
  - 2 The respondents are ordered to deliver up within 7 days all infringing copies of the work to the applicant.
  - 3 The respondents are ordered, jointly and severally, to pay 50 per cent of the costs of suit, including :
    - 3.1 The qualifying fees of Mr Marius Bosman;
    - 3.2 The costs of the Anton Piller application, including the costs of the supervising attorney and experts used therein.
    - 3.3 The costs of the application on 11 September 2002.

\_\_\_\_\_  
P E STREICHER  
JUDGE OF APPEAL

CONCUR:  
HARMS JA)  
MTHIYANE JA)  
CLOETE JA)  
LEWIS JA)

# Metadata

## Document metadata

- ***Descriptive metadata***: date of delivery, date of publication, number of registry, name of chancellor, nature of the case, etc.
- ***Classification metadata***: matter of the case (thesaurus)
- ***Workflow metadata***: lifecycle of the case-law and the history (first order, appeal, etc.)
- ***References***: it is possible through the references to obtain all the document cited by the case-law and all the document that cite this case-law
- ***Semantic annotation*** of the case-law: relevancy for the law report (*reportable criteria: e.g if the case introduce a new rule of law*)
- ***Ontology***: People, Organization, Role, Actions



# Citations classification

## ***Typology***

- Legislation, Subsidiary legislation, Regulation
- national and foreign case-law
- jurisprudence, doctrine
- Book, article, other sources

## ***Role***

- for argument (dissenting, concurring, exception)
- for comparison (supporting the thesis)
- for information

## ***Static or Dynamic***

- In opposite to the legislation where the citation are mostly dynamic
- In the case-law the citation are mostly static  
*“tempus regit actum”*



# Text semantic annotation

***Each part of the text*** can be annotated for different purposes:

- Examining and comparing the arguments of the judges: logic consistency check
- Legal concept annotation: retrieval and comparison

***Example of semantic annotation:***

- In the ***Background***: modeling of the case for the comparison with other real cases
- In the ***Motivation***: the part of the text relevant for the support the decision and new rule of law introduced
- In the ***Decision***: the statement on the parties



# Conclusion: benefit of the standard (1/3)

## *For the citizens and enterprises*

- ***Semantic retrieval***: to extract and manipulate the knowledge in the case-law. E.g. the citizen can retrieve the case-law near to his/her personal situation
- ***Comparison***: to compare different case-laws also coming from different countries. E.g. the enterprises can compare the case-laws in the different countries and decide the more convenient country where to invest
- ***Traceability***: the citizens and enterprises can trace the judicial proceeding and have awareness of the schedule, the expectation and the final results



# Conclusion: benefit of the standard (2/3)

## *For the Judge*

- ***Drafting and Consolidation***: support the judge with tools (editors) that help to write the judgments and to consolidate different decisions coming from different judges
- ***Decision support system***: help the young judges to learn from the precedents and to maintain a quality standard
- ***Dialogue***: help judges to learn from each other
- ***Workflow support***: help the judge in the trial steps



# Conclusion: benefit of the standard (3/3)

## *For the publishers:*

- ***Publishing***: favor the publishing process, the commercial exploitation of the editors, different manifestation of the same content (Gazette, paper, law report, etc.)
- ***Law report definition***: favor the law report definition.  
E.g. selection of which case-law are relevant for inserting it in the national law report

