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# LAW REVIEWS AND THE MIGRATION TO CYBERSPACE

by

**M. ETHAN KATSH\***

I am very pleased to contribute an introduction to this issue of the Akron Law Review, the first to appear both in print and on the World Wide Web. There are very few law reviews that have surfaced, thus far, on the World Wide Web.<sup>1</sup> The editors who decided to take this step deserve our respect and admiration. Their decision reflects an understanding that the world of publishing and distributing information has begun to change, and begun to change in a significant way.

What does it mean to move from one medium to another? How should one think about and characterize the gradual migration of important law materials from the stacks of libraries to disks, CD-ROMs and computer net works?<sup>2</sup> Do we simply have a new addition to the marketplace or do we have the beginnings of a new marketplace? Do we merely have faster access to a familiar type of legal information, or is this the beginning of a change in the nature of legal information, in who is likely to have access to legal information and in how it is used?

With Lexis and Westlaw, the law probably has more of its core materials in electronic form than any other discipline. There has been an electronic version of the Akron Law Review, for example, since the law review was made available on Westlaw in 1982. It might, therefore, be asked why the appearance of a World Wide Web version is significant at all. Indeed, it might be argued that the Review's "home page" on the Web gives it a new home, a new place for interacting with the knowledge contained in the Review, but that little else is changed. Is this so? Does this new home, this new format, have long term implications for law and legal scholarship? Does it, to borrow a metaphor from print culture that may lose some meaning over time, "open a new chapter" for scholarship, for law schools, and for citizens?

In considering these questions, there is something interesting to be learned from an incident in the life of the anthropologist Edward Hall. Some years ago, while on a research trip to Japan, Hall returned to his hotel one day, went up to his room, opened the door, and found that while it was the room he had been living in, someone else's belongings were there. Hall took this in for a few moments, all the time feeling uncomfortable, indeed feeling that somehow he must be in the wrong place, and that he would be found and accused of being in someone else's room. He then went down to the desk where he was told that his room and his belongings had been moved. He was given a new key, went up to his new room, and found that all of his possessions had been laid out for him in just about the same way he had left them in the first room. There was a marked resemblance to the room and the arrangement and yet, he could feel, much was different as well.<sup>3</sup>

Professor Hall, as an anthropologist, understood that what was important about his experience went beyond the nature of the artifacts in his new space. He realized that he was not only in an unfamiliar physical place but that he was in a culture and environment that he did not understand completely. He was no longer confident in what he could expect to occur in this space. Whose space was this, for example, and might he be moved again? Hall realized that the new environment had physical resemblances to what was familiar to him but he also recognized that, due to strong environmental or cultural forces, his role as tourist/guest/renter had changed. Long held assumptions about hotels no longer seemed to be valid and he became aware that his relationship with the hotel was different from what he had assumed it to be. What was his, what was shared, and what belonged to others were no longer as clear as they had been.

Professor Hall, as he adapted to his new space, continued to wonder about what his new surroundings signified. He eventually left Tokyo, where the first hotel had been located, and moved to Kyoto. He writes:

There we were fortunate enough to stay in a wonderful little country inn on the side of a hill overlooking the town. Kyoto is much more traditional and less industrialized than Tokyo. After we had been there about a week and had thoroughly settled into our new Japanese surroundings, we returned one night to be met at the door by an apologetic manager who was stammering something. I knew immediately that we had been moved, so I said, "You had to move us. Please don't let this bother you, because we understand. Just show us to our new rooms and it will be all right." Our interpreter explained as we started to go through the door that we weren't in that hotel any longer but had been moved to another hotel. What a blow! Again, without warning. We wondered what the new hotel would be like, and with our descent into the town our hearts sank further. Finally, when we could descend no more, the taxi took off into a part of the city we hadn't seen before. No Europeans here. The streets got narrower and narrower until we turned into a side street that could barely accommodate the tiny Japanese taxi into which we were squeezed. Clearly this was a hotel of another class. I found that, by then, I was getting a little paranoid, which is easy enough to do in a foreign land, and said to myself, "They must think we are very low-status people indeed to treat us this way."

As it turned out, the neighborhood, in fact the whole district, showed us an entirely different side of life from what we had seen before, much more interesting and authentic. True, we did have some communication problems, because no one was used to dealing with foreigners, but few of them were serious.<sup>4</sup>

Hall again understood that what was causing him difficulty was not only the physical inconvenience of being moved but his concern over what it meant that he had been moved. Any space, he realized, was not simply a physical location but a cultural environment with embedded norms and values. Ultimately, he learned that being moved

did not have the same significance as being moved might have in the United States. Hotel space looked the same but it was being governed by some different conventions and values. Indeed, far from according him a low status, he learned that the hotel managers who moved him were treating him quite respectfully. He writes that "the fact that I was moved was tangible evidence that I was being treated as a family member a relationship in which one can afford to be 'relaxed and informal and not stand on ceremony.'"<sup>5</sup>

As the Akron Law Review finds itself in a new hotel, so to speak, it looks, at first glance, fairly similar to how it looked before. Yet, as Hall's experience suggests, a change in space may signify something important even when little else appears to have changed. Objects that mean one thing in the old space or environment may mean something different in the new space.<sup>6</sup>

If, as the Akron Law Review is placed on the Web, one focuses only on the content of the articles that are now available in electronic form, one would be missing much of the significance of what is occurring as increasing amounts of data are being placed on machines and made accessible to every one with a connection to the Internet. Initially, at least, the movement from print to electronic form is important less for a change in the content of individual publications than for a change in context, less for a change in what is written than for a change in how information is being used and who is able to use it.

As law reviews migrate to the digital world, they become part of an environment that is much less exclusive than the traditional law library. Law libraries are often open to the public but may not be very accessible to the public. Citizens are not barred from most law libraries, many of which are located in public buildings, but the architecture, atmosphere and systems for organizing and finding information can be sufficiently intimidating to discourage entry.

David Bolter, one of the most insightful writers about the new media, has commented that "each technology gives us a different space."<sup>7</sup> Cyberspace is, in this sense, an information place. It is, however, an information place where familiar constraints of time, of how long it takes to complete an informational task, and of space, of where one is able to look for information, seem to have been lifted. With the right software, people and information who are quite far apart can be linked together as if they were in the same space.

Bolter's claim that a new medium provides us with a new space suggests that we should be sensitive to the environment and culture in which we find information. Thus, we should be aware that the Akron Law Review which, in its old space, was bounded by the walls of the library, the covers of the book, and the margins of the printed page, has landed in an environment which has different and much more flexible boundaries. As in the past, of course, there will continue to be a great deal of information in law reviews that will be of little interest to lay people or to professionals in other fields. Law reviews are, quite understandably, aimed at an audience of legal professionals. Yet, it should be the content of the material, not the complexity of the space in which the material is located, that deters non-traditional audiences from reading these materials.

The increasingly accessible nature of the computer network provides one key to changes in who may use the Akron Law Review in the future. The physical boundaries and physical constraints that are always an element in a decision about when and where to use information, become less constraining in a digital world. Those who have been entering the Cornell Law School Legal Information Institute site on the World Wide Web,<sup>8</sup> for example, are a much more heterogenous {and more numerous} group than those who enter the Cornell Law School Library reading room. Yet, it is not simply issues of access that are changing. Professor Hall's experience is relevant, I believe, because it reminds us that there are cultural forces at work in all spaces in that there are assumptions about what it is possible to do in particular spaces and in how the space should be used. From what we think can be done often develop expectations about what should be done.

As bodies of knowledge increasingly reside on the Internet, it will become clear to editors, authors, and users, that the expression "in print" is more than a factual statement of where a piece of information is located. To say that something is "in print" suggests more than the fact that the work can be obtained through traditional means. In addition, the expression indicates to us that the work is no longer readily changeable, that it has been bound and cannot be unbound, that every available copy is the same as every other copy, and that each copy will have those familiar identifying characteristics such as a title page, copyright notice, justified margins, and index, characteristics that communicate in a visual way that the information is in final form.

Placing information on the Internet not only makes the information more accessible, but places it in a form where many of these facets of print works, such as fixity, uniformity, and authenticity, will be questioned. The World Wide Web provides opportunities for interactivity, for forms of argument that are hypertextual and non-linear,<sup>9</sup> and for graphical representations that were often discouraged in print journals.<sup>10</sup> Recently, when an article of mine was published in a law review, I received a publication agreement from the journal which contained the following:

You agree to bear the costs for preparation of any illustrations, graphs, or other non-textual elements of your symposium article; if we agree to share these costs, any such agreement must be executed in writing.

If there is still some doubt that law reviews are more than containers of information, that they reflect attitudes that are consistent with "print culture" and "print logic," this clause should be considered. Visual communication can, in many contexts, be much more effective than text.<sup>11</sup> Print, however, has never fostered a very supportive environment for text and images to coexist.<sup>12</sup> There may not be any examples of graphical communication in this issue of the Review but this is likely to change as the electronic environment becomes more supportive of visual communication than print was.

We should put such agreements in time capsules because they represent a mindset oriented around the medium of print. It is a mindset that reflects a medium where visual communication is discouraged. It is a mindset which assumes particular roles and relationships for editor, author, and reader. It is a mindset attuned to standardized and

uniform information that acquires a higher level of authority when it appears "in print ." It is a mindset that accepts the rules of formatting and appearance that are laid out in the Blue Book. It is a mindset that is increasingly vulnerable.

The World Wide Web changes expectations along the dimensions of time and space. There is no need to distribute information since world-wide access is possible as soon as the information is placed on a server. Information in hypertextual form allows users to move away from the path suggested by the author. While footnotes allow a digression from the text, hypertext links may move the reader away from the text permanently. Even the manner in which information appears on the screen may have less to do with how the publisher wishes the information to look than with how the reader instructs the browser that is being used.

As electronic technologies displace print technologies as the principle means for *working* with information, they also displace print as the principle means for *thinking* about information. In addition to providing new opportunities for working with information, they contribute to shifts in the value of information, in the language used to describe information, in customs used to employ information, in expectations about how information will be used, and in norms that are applied to information and communication.

When technology is thought about in pragmatic or functional terms, it is looked at as a tool. Tools extend our capabilities to perform certain activities. Tools make it easier to do some acts, and accelerate how quickly an act is performed. The new media enable us to expand in rather extraordinary ways our capabilities for processing, storing, organizing, representing, and communicating information. In the current transition period, therefore, it is not surprising that the prevailing attitude is that these technologies are merely tools, artifacts whose primary impact is to accelerate greatly the performance of informational tasks.

Are they something more? The sociologist Peter Berger has argued that,

[o]nce produced, the tool has a being of its own that cannot be readily changed by those who employ it. Indeed, the tool {say, an agricultural implement} may even force the logic of its being upon its users, sometimes in a way that may not be particularly agreeable to them. For instance, a plow, though obviously a human product, is an external object, not only in the sense that its users may fall over it and hurt themselves as a result, just as they may by falling over a rock or a stump or any other natural object. More interestingly, the plow may compel its users to arrange their agricultural activity, and perhaps also other parts of their lives, in a way that conforms to *its* own logic, and they may have been neither intended nor foreseen by those who originally devised it. The same objectivity, however, characterizes the non-material elements of culture as well. Man invents a language and then finds that both his speaking and his thinking are dominated by its grammar.<sup>13</sup>

A new information environment infiltrates our minds as well as our activities, although changes in thought and orientation occur more slowly and less noticeably than changes in behavior. At some point, we not only are presented with information in a new form but begin thinking about information differently because we acclimate ourselves to the new form. Thus, as electronic modes of information acquisition become commonplace, not only do we become able to obtain information from distant places but we stop thinking about distance and begin not to think of information as being in distant places. The concept and relevancy of distance change, and expectations and perspectives change.

Law reviews have been subjected to various criticisms in recent years.<sup>14</sup> The editing and publishing process is governed by many traditions and by a lengthy style-book. Freedom to innovate is not easy in such an environment. The University of Akron Law Review editors who have decided to place their journal in cyberspace have made an innovative decision. It will be interesting to see what this new culture brings.

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1. A list of online law journals is maintained at <http://www.usc.edu/dept/law-lib/legallst/journals.html>

2. *See generally*, M. ETHAN KATSH, *THE ELECTRONIC MEDIA AND THE TRANSFORMATION OF LAW* (1989), and M. ETHAN KATSH, *LAW IN DIGITAL WORLD* (1995) [hereinafter KATSH, *DIGITAL WORLD*].

3. EDWARD T. HALL, *BEYOND CULTURE* 58-59 (1976).

4. *Id.* at 60-61.

5. *Id.* at 65.

6. The classic work explaining the shift in the meaning and value of text from scribal to print culture is ELIZABETH L. EISENSTEIN, *THE PRINTING PRESS AS AN AGENT OF CHANGE* (1979).

7. JAY DAVID BOLTER, *WRITING SPACE: THE COMPUTER, HYPERTEXT, AND THE HISTORY OF WRITING* 11 (1991).

8. URL: <http://www.law.cornell.edu>

9. JAY DAVID BOLTER, *WRITING SPACE: THE COMPUTER, HYPERTEXT, AND THE HISTORY OF WRITING* (1992); GEORGE LANDOW, *HYPERTEXT* (1992); THEODOR H. NELSON, *LITERARY MACHINES* (1981); *TEXT CONTEXT, AND HYPERTEXT* (Edward Barrett ed.) (1988); *THE SOCIETY OF TEXT* (Edward Barrett ed.) (1989); TROTTER HARDY *Project Clear's Paper Choice: A Hypertext System for Giving Advice About Legal Research*, 82 *LAW LIB. J.* 209 (1990); David R. Johnson, *Building and Using Hypertext Systems*, *LAW PRAC. MGMT.*, May-June 1991, at 28; [Pamela Samuelson and Robert J. Glushko](#), *Electronic Communications and Legal Change: Intellectual Property Rights for Digital Library and Hypertext Publishing Systems*, 6 *HARV. J. LAW AND TECH.* 237 (1993); [Ronald W. Staudt](#), *Legal Mindstorms: Lawyers, Computers and Powerful Ideas*, 31 *JURIMETRICS J.* 171 (1991).

10. *See* M. ETHAN KATSH, *Rights, Camera, Action: Cyberspatial Settings and the First Amendment*, 104 *YALE L. J.* 1698-1700 (1995).

11. EDWARD R. TUFTE, *ENVISIONING INFORMATION* (1989); EDWARD R. TUFTE, *THE VISUAL DISPLAY OF QUANTITATIVE INFORMATION* (1982).

12. See KATSH, DIGITAL WORLD, *supra* note 2, at 133-171.

13. PETER L. BERGER, THE SACRED CANOPY 9 (1969).

14. For example, see the symposia at 70 CHI.-KENT L. REV. 71 (1994); 61 U. CHI. L. REV. 527 (1994); 47 STAN. L. REV. 1117 (1995).