Online and open access: considering the future of law journals

PHIL RUBIN '11, the Duke Law Journal editor in chief, concedes that paper-and-ink issues of his and other venerable law journals are likely on their way out.

“I think everybody recognizes, deep down, that eventually the printing presses will stop, not because of some ideological view, but because it’s going to become the overwhelmingly sensible thing to do,” he said. “The question everyone is asking is about timing and preparation. There is a lot of preparation for going solely online. You want to really understand online publishing. If that’s going to be the only way you present your journal, it has to be really good.”

Rubin and other law journal editors got a leg up on preparation — and aired concerns — during a daylong workshop on open-access best practices, held at Duke Law School on Oct. 22. Co-sponsored by Duke’s J. Michael Goodson Law Library and Center for the Study of the Public Domain, along with the Harvard Law School Library, the workshop featured editors, law librarians, and leading thinkers on open access, legal, and digital publishing; in addition to those in attendance, students and scholars at Harvard and elsewhere participated via videoconference and social networks.

Held during national Open Access Week, the workshop advanced the principles articulated in the 2009 Durham Statement on Open Access to Legal Scholarship, explained Richard Danner. Duke Law’s senior associate dean for information services and Rufty Research Professor of Law, he was the workshop’s chief organizer. Developed at a Duke Law meeting by 12 library directors from the country’s top university law libraries, the Durham Statement calls for making law journal articles “available in stable, open, digital formats in place of print.”

“The Durham Statement was meant as a call for people to start thinking about this,” Danner said. “It had two purposes — to call for making journals openly accessible, and to hasten the move toward
online-only journals. The idea was that law journals and deans would say, “This is a really great idea. We should stop wasting all this money printing things people look at online.” All leading law journals publish electronically as well as in print, he observed.

“The workshop promoted a discussion of open-access issues and provided some fairly practical guidance to law review editors about issues in this digital era when, regardless of whether they continue to print or not, electronic publishing platforms, access, and preservation all need to be addressed,” Danner said.

Phasing out print — slowly

Rubin and his counterparts from the Texas Law Review, Georgetown Law Journal and Northwestern University Law Review agreed that a phase out of print is inevitable, though not imminent, during one panel discussion. Still, said Rubin, individual journal editors are reluctant to make the first move, fearing a loss of subscribers and status among readers and scholars.

“We still have authors who would choose us over an online-only journal because of the prestige that they associate with print, which is not something, necessarily, that we have control over,” said Stephanie Kissel, editor of Northwestern University Law Review.

Danner cited preservation as another frequent argument for sticking with print.

“There is still no stable, permanent way to preserve digital media, and so you have people making the argument for printing these things because that’s the only way you can be sure they’re going to be here in 50 years,” he said. “Taken on its own that’s true, but there are ways to do it. The media change, but what that means is that you have to keep moving what you’re storing onto different media. I think that’s inevitable — the next thing isn’t going to be the last, permanent, storage medium.”

Adjusting skill sets for the digital era

Paolo Mangiafico, Duke’s director of digital information strategy, outlined the various considerations law journal editors need to assess as they consider online-publishing platforms.

“What’s your budget? What kind of tech support will you have available? What kinds of workflows do you want integrated into your delivery platform? Some platforms have pretty extensive workflow built in for the editorial process, but some people prefer the more informal way, which is to communicate via emails.”

Rubin identified the short tenure of law journal editors as an obstacle to making large-scale transitions, particularly when the transition presents a complicated set of time-consuming tasks. “You’re ‘new’ the whole time, and by the time you’re not new, you graduate and you leave,” he said. Journal editors would be wise to experiment with small-scale change, or at least think through the implications of making changes, during their time helming journals.

“Then you have to leave a lot of ‘notes to my successor,’” he said. — Forrest Norman

Open access at Duke Law

UNDER PROFESSOR RICHARD DANNER’S leadership, the Law School became, in 1998, the first in the country to make all the articles published in its law journals — including back issues — freely accessible online. In addition, unlike most other law reviews, Duke’s journals explicitly allow authors to post articles published in the journals without restriction on freely accessible third party web sites, as well as on Internet sites under their own control.

In 2005, Duke Law furthered its commitment to open access by establishing an online archive of faculty scholarship, providing free access to the majority of articles published by Duke Law faculty. The contents of that archive are now the foundation of the Duke Law Scholarship Repository, which includes the text of lectures delivered at Duke Law, webcasts from scholarly presentations and conferences, publications of Duke Law’s research centers, Duke Law student works, and more. Hosted on Berkeley Electronic Press (bepress) and created in partnership with Digital Commons, the Duke Law Scholarship Repository features advanced search functions and cross-indexes scholarship through other bepress sites and Digital Commons repositories.

By making scholarship as easily and widely accessible as possible, Duke does a service to the authors who publish in its journals, said James Boyle, William Neal Reynolds Professor of Law. “Imagine spending a year writing an article and discovering after you finished it that only someone with a sophisticated library or an expensive subscription could read it,” he said. Duke’s commitment to open access increases readership for authors, which include faculty from other schools as well as student scholars, and can contribute to higher citations for Duke-published work. “It’s a huge benefit to both our students and to faculty authors,” Boyle said.

PROFESSOR RICHARD DANNER