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Op-Ed / Opinions and Editorials

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Opinions and Editorials

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Gigabytes of Precision

by William J. Hamilton, III

If you can hold all the law in your hand, can you hold the law at all?

Two weeks ago I received all of the cases decided by the Supreme Court and Court of Appeals of South Carolina since 1945 on a single, shiny CD computer disk. In a few weeks a new disk will replace it which also contains the Constitution and all of the state's laws as well. If this information was printed in paper books it would fill four encyclopedias.

In a way it is wonderful, I can now find laws and cases in twenty seconds, faster than I can even walk across the office and pick up the old law books. Searching the disk locates more cases than the old indexes. Nothing found need ever be retyped. While the disk and equipment needed to use it was not cheap, even small law firms can afford it. Libraries, law enforcement agencies and other institutions will be buying it as well.

It is not unique. The recently passed NAFTA agreement was distributed by the White House on a similar disk. Encyclopedias, reference works and a national phone book are all available now. The ability to put a thousand dollars of printing on a two dollar piece of silver colored plastic now means that information can be distributed for the price of information alone.

If it were as simple as more information for more people at lower cost, there would be nothing to do but celebrate.

However, the man who sold me the computer disk told me it has been months since his company sold a copy of the casebooks on paper. Each year in South Carolina one or two volumes about 600 pages in length are added to the long line that stretches back to the American Revolution. These books contain the final result of legal contests that have struggled their way from deposition to hearing to

appeal and finally, to the printed page.

A few of my cases are in those books. Most lawyers in South Carolina share that honor. When a case is argued before the appellate courts, long after the type-written judge's opinion has been mailed to the parties involved, our names and cases appear in the books. Even if later overruled, the case remains part of the permanent accumulation of struggle and result.

It is an accumulation that goes back beyond paper to stone. Virtually every person who works with the law, attorney, police officer, public official or legislator traces their legal ideal to the twelve tables of Rome and the Ten Commandments. Then the law really was written in stone, the foundation blocks of order. The brevity, permanence and public respect for those ancient rock codes are the measure of power in the law. Today a lawyer may argue about Interstate Commerce Commission regulations that may be gone tomorrow. Motions may hinge on statutes the legislature may amend next year. When both sides draw close to the Constitution or the old, enduring precedents of the law, however, there is a different tone. Each side senses that this matters and it endures.

What matters and endures is increasingly being overtaken by the new and a lot of it. Today most courts send their opinions to the legal publishers on computer disks. It is dumped directly into the publisher's computer systems without being retyped. It is available to computers over phone lines in days and on the newest revised CD ROM computer disk a few weeks later.

From there, I and my fellow lawyers extract the parts we need for our work, insert it (again without retyping) into the orders and opinions we write for judges. That in turn is incorporated into the next batch of legal opinions sent out on computer disk from the courts to the publishers, who of course then send the same

words back to us who promptly begin the process again. The result is an increasing volume of legal opinions.

Because there is more, there is increasing hunger for precision. The capacity to generalize to principle and apply principle to facts is devalued. It is no longer enough to find a case which says exceeding the speed limit is negligence per se. Everyone wants a case that shows it applies to trucks. Find a case about trucks, and a case about 18-wheelers is requested. In this hunt for the perfectly aligned precedent, the idea of the law as principle slips away.

The geography of computerized information is different as well. In the legal indexes, cases concerning similar ideas are listed next to each other. Divorce adjoins alimony and negligence is the neighbor of assault. In the books, it always pays to flip around in the vicinity. On the computer, the request for information goes directly to the intended target, missing the neighborhood and possibly the point.

Were this only the problem of lawyers, it would matter little. It is our job to find and use cases. However, more and more of what we all use is stored, published and accessed this way. Our government and public agencies now rely on this technology. Did any one person read every word of NAFTA and its side agreements, or did they just electronically pluck out the parts that concerned them?

There are disks with huge volumes of information on how to raise children, practice medicine or prepare taxes. The ability to get the exact answer in 15 seconds may eclipse the value of knowing the because, why and character of the disciplines we practice. With the Bible on computer disk you can find out about the blessed meek without being aware that the pure in heart are covered by the same chapter. In that process, the sermon is lost.

Freed from the need to reprint huge collections of books, revision will become easier and nearly invisible. In time, the biggest, most recent collection of data will enjoy the respect that enduring principle and knowledge used to have. Of course, since there is no limit to how much can be distributed, there will be more and longer rules. We can expect tax regulations for Dentists that differ from those of Orthodontists. Account-

ants for one may never read the rules for the other.

People who distribute information without thinking about it will be in paradise. Those who think about every word may be either isolated or lost.

This is the first generation that can possess rapid access to information without knowing much about it. If we do not discipline and train ourselves to understand, we may become a Babel of spe-

cialists. If we can retain our capacity to discern, generalize and weigh information, these new tools may enable us to master not just information, but knowledge as well.

William Hamilton is a Charleston attorney. A version of this essay appeared in the Charleston Post & Courier.

How the Journals Crisis Can Be Solved: A Semi-Utopian Proposal

by Philip Altbach (SUNY, Buffalo)

For a decade or more, vociferous arguments have raged about what has become known as the "journals crisis." The facts are clear. Academic libraries have drastically cut back on journal subscriptions and the numbers of journals in library collections have dropped. Journal publishers, especially the large private-sector multinationals, have raised subscription prices much in excess of the rate of inflation. The number of scholarly journals has increased as well — no one knows exactly how many there are but estimates range between 60,000 and 100,000 journals worldwide. Professors, seeking more outlets for their work and responding to increasing specialization, have encouraged the establishment of more journals and the expansion of existing ones. Publishers have been only too happy to oblige since the large publishers benefit from the economies of scale and from the additional revenues that new or expanded journals generate. The consequences of what has been called the "journals crisis" is seriously damaging scholarly communication, the ability of the libraries to serve the needs of the academic community and, in the long run, the publishers themselves.

The ultimate producers and users of academic journals are an important, but often forgotten, element in the journal crisis. The professors and researchers who write for the journals and use them as the primary means of scholarly communications — and who are also the ultimate consumers of the knowledge produced, are an essential part of the system. They are, however, almost completely ignorant of the ways in which the system works. They know only that it is

increasingly difficult, and expensive, to obtain access to scientific information and they know that their academic libraries actually subscribe to fewer and fewer journals. Any solution to the crisis must include the academic community. Parenthetically, it might be added that perhaps the most ignorant of the role of the scholarly communications system are academic administrators. This group has ultimate control over university budgets and, so far, they have been much more concerned with balancing those budgets than with the future of scholarly communications.

There has been much criticism, especially in the United States, of the "publish or perish" syndrome which forces academics in the research-oriented universities to publish articles in order to obtain promotion. Sometimes, the critics argue, more attention is paid to the quantity of writing than to its quality. The system of peer review in the journals is supposed to weed out work of poor quality. But the proliferation of journals has meant that much of marginal quality is published. The professors have been happy to see the journals expand in number and in size because this has meant more opportunities to publish. The publishers have been happy as well since they can increase their incomes and profit margins. There are, of course, good reasons for much of the growth of journals — increased scientific productivity and the emergence of new and interdisciplinary specialties — but a significant part of the expansion has not been necessary. There are currently efforts to reform the evaluation procedures for promotion and emphasize both teaching and the quality of research more.

Now that the major elements of the

scholarly journal system have been identified, it is possible to indicate how each of them must contribute to a solution to the current crisis. The solutions suggested here are predicated on several assumptions which may be somewhat controversial. First, traditional journals, carefully edited through peer review and printed and distributed in traditional ways, must remain the core of the scientific communication system in the medium and perhaps also in the long run. While technologies, including networking and online journals, to name a few, have a role, they cannot dominate the system. Many users, not only in the United States but also in other countries, do not have ready access to databases and networking arrangements. Traditional journals remain relatively inexpensive to produce and distribute if costs are kept under control. Secondly, the journal system must be sensitive to the needs of users and authors as a primary concern and not exclusively concerned with the problems of libraries and publishers. It must be kept in mind that the users are, in many respects, quite conservative in their practices and some elements of this conservatism serve the academic community well. Third, the journal system has a responsibility to users

in other countries and it must be aware of the needs of scholars in smaller scientific communities and in developing countries. Science is truly international, and current trends in technology and pricing tend to lock out scholars who do not have access to the latest technologies. Finally, the aim of the system is to permit academic libraries — and individual scholars — to subscribe to as many journals as they need to carry out their missions. This gives individual scholars access and it provides a subscriber base to the journals and their publishers.

The elements of a solution for the “crisis” are —

- The scientific community — notably the universities and the funders of research (including both government agencies such as the National Science Foundation in the U.S. and private foundations and research laboratories) — must immediately and significantly increase funding for scholarly communication and they must maintain adequate funding over the long run. Funding must keep pace with inflation at least and probably should increase more than that to reflect expansion of scientific information and research. The cuts of recent years have been a primary source of the crisis and must be reversed if it is to be solved.
- Those journal publishers which have been responsible for the lion’s share of the price increases must undertake to limit their increases to the rate of inflation plus the direct cost increases in paper or other elements in journal production. It may well be appropriate to roll back prices of some journals where increases have been especially dramatic. It is possible to contain journal costs. A number of U.S.-based journal publishers have maintained a reasonable price structure, including university presses, private publishers and scholarly associations. If it is impossible for the multinational publishers to maintain acceptable prices while publishing in the Netherlands or Britain, it may be possible to streamline editorial and production operations to reduce costs. There has traditionally been a considerable difference in the prices of journals in the biomedical and natural sciences on the one hand and in the social

sciences and humanities on the other. While there is some justification for these variations, the use of computer-based composition, scanning and the like should significantly reduce the difference. The point is that it is possible to profitably produce scholarly journals at prices significantly under current rates charged by some journal publishers. Journal prices must be contained, and if publishers are unwilling or unable to contain prices, they should be subject to sanction by users.

- The circulation of journals must be maintained at levels that permit profitable publication. This means that libraries, which purchase the overwhelming number of academic journals, must buy journals and not rely increasingly on networking arrangements. More reasonable journal pricing and increased support should permit libraries to expand their journal collections. Publishers should also offer reasonably priced subscriptions to individuals. Scholars and researchers must support their journals by supporting them and subscribing to them.
- Knowledge is international in scope and journals are increasingly international as well. There is an international market for journals and this market should be aggressively pursued.
- The academic community must take an active interest in scholarly communication and contribute to the solution of the current crisis. More attention must be paid to quality rather than quantity in evaluating faculty members. The peer review system must be strengthened and manuscripts which do not directly contribute to knowledge should be rejected. Professors must be more circumspect in establishing new journals. The entire scholarly community — researchers and scholars, administrators, and governments and agency officials must understand the nuances of scholarly publishing.
- The proliferation of journals must stop. Indeed, it may be possible, through merging some existing journals to reduce the numbers of journals in some areas. While there is a

place for new journals in innovative and interdisciplinary fields, great care should be taken in the creation of new publications. The academic community and the publishers both need to cooperate to rationalize the journal system.

- Users must pay for using journals, through subscriptions, payment for making photocopies beyond rather narrowly interpreted “fair use,” reprinting materials for classroom or research use and the like. If the prices for such use are kept reasonable and there is an easy way to provide payment, income from subsidiary uses can be substantial. The key here is ease in obtaining access to materials and providing payment and also charging acceptable prices. At present, prices vary greatly and are often so exorbitant that users either violate copyright to use materials without payment or do not use articles.

In many ways, the current crisis in scholarly communication has been created by the financial crisis of higher education in many industrialized nations, greed on the part of a number of publishers and uncontrolled proliferation in the expansion of journals. Rapidly changing technologies contribute to uncertainty in the system. The introduction of library networking, impelled generally by financial need, has added to the crisis. The fact is that the scholarly communications system can be restored to health by a few relatively simple actions. Additional resources are needed, but these should be seen more as restoring support than was previously provided to the system. There is little question that scientific communications is an important part of the R&D effort of any country. The multinational publishers have clearly taken advantage of the situation and they must contribute to the solution of the problem if the system is to benefit all. And the producers and users of research must be aware of the nature of the system. If these steps are taken, the scholarly journal system can be restored to health. ☞

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