Editorial - Open legal journals in the space of flows: the future of legal journal publication

Paul Maharg and Abhilash Nair

Twenty years ago a new law journal appeared, called the _Journal of Information, Law & Technology_. Its acronym was rather unfortunate, but in every other way it was a breath of fresh air in legal journals. The title precisely described its contents. The comma between 'Information' and 'Law' was significant: this wasn't another journal about a niche area of law, but a journal with truly interdisciplinary ambitions, where the information revolution, in the form of Information Science and Legal Informatics, would be given space and attention. The ampersand fused law and technology closer, too, giving notice of the journal's views that the convergence of law and technology was already under way, and that that fusion, both a merging and an emerging, required careful analysis.

The journal was a product of its time. Back in 1996, when the World Wide Web was still a relatively new phenomenon, it was difficult to see how it might all develop. The internet commercial revolution hadn't yet taken off: there were no web-based corporations, no Google or Amazon. Only the year before, Bill Gates had sent his famous manifesto memo to Microsoft, reversing corporate scepticism about the value of digital communications networks; and Microsoft's blindness was the norm. For most, even in the industry, it was difficult to see how digital media could do much more than replicate already-existing services and forms of communications. Theorists and researchers, however, were already analysing and mapping the profound effects of technology on society and social relations: early writers such as Jacques Ellul, Hans Jonas, Hannah Arendt, Martin Heidegger, Herbert Marcuse, Don Ihde, Pierre Levy; analysts of media and technology, such as Marshall McLuhan, Raymond Williams, Lelia Green; internet and information network theorists such as Howard Rheingold, Sherry Turkle, Manuel Castells, Bruno Latour, and many others. Four years after JILT first appeared, Castells defined three core characteristics of the new networked social economy: it is informational, it is global, and its organisational unit is the networked enterprise. All these interact within what Castells, drawing on his earlier work on informational cities, called 'the space of flows'. [1] This resonant phrase applies also to the form and content of communications produced within the digital networked economy. They applied to academic journals in 1996: they apply even more today.

It seemed the ideal moment to produce an experimental journal, therefore, one devoted to the development of digital and information theory and research in the domain of law. JILT was a project of the UK Higher Education Electronic Libraries Programme (eLib), namely the Electronic Law Journals. ELJ in turn was a collaborative project undertaken by the two centres that comprised the Computers in Teaching Initiative, namely the Law Technology Centre at Warwick University, and the Centre for Law Computers and Technology, at Strathclyde University. Perhaps most significantly, the journal was from the start an entirely open journal, possibly the second-oldest such publication in Europe. It flourished under the aegis of the two centres and BILETA (British and Irish Law Education Technology Association), and was recognised for its innovation in a clutch of awards – the first Charlesworth Group Award for Electronic Journals, and in 2002 the BIALL Legal Serial Publication of the Year award. In 2010, under new editorial direction and using the open

platform of the Public Knowledge Project (PKP) it became the *European Journal of Law and Technology*, alongside another open legal journal publication on PKP software, the *European Journal of Current Legal Issues*.

In 2017, we'll be exploring some aspects of that history, and of the future for law journals online, both open journals such as EJLT, and proprietary journals – more information on that here in EJLT in early 2017. Meanwhile, in this final issue of 2016, we include five original peer-reviewed articles and a commentary. They cover a range of topics including the legal challenges raised by 3D printing technology, intermediary liability, robotic journalists, cybercrime and technology in legal education.

Kirley, in her article ' The Robot as Cub Reporter: Law's Emerging Role in Cognitive Journalism' looks at the future of robotic journalism from a legal perspective. As robot-written news and the increased use of algorithms (and consequent decrease of human curation) reshape the journalism business, Kirley persuasively argues that cognitive journalism raises newer challenges for the law. She carefully examines the legal issues raised by driverless cars, drones, and nanotechnology in order to contextualize the emerging law of the robot in journalism. Kirley concludes the paper by stressing that the legitimate place of the law in cognitive journalism needs to be established clearly, and calls for further research in this area to this end.

In their article 'Co-Creation, Commercialization and Intellectual Property – Challenges with 3D Printing', Ballardini, Lindman and Flores Ituarte discuss potential legal issues and challenges in the context of 3D printing technology. The combination of digital technology and widespread internet access has the potential for decentralisation and collaborative co-designing of products with user communities – what the authors call 'co-creation'. In this insightful and well-researched article the authors draw our attention to some of the legal and intellectual property issues that such co-creation models raise.

Combating illegal content on the internet remains a challenge for regulators and establishing the role of intermediaries within the legal framework continues to be a relevant question. Garstka, in his article ' Looking Above and Beyond the Blunt Expectation: Specified Request as the Recommended Approach to Intermediary Liability in Cyberspace', considers two conceptual models of intermediary liability – what he calls the 'blunt expectation' and 'specified request' approaches. Garstka compares the two and makes a case for supporting the 'specified request' model, where liability stems from non-compliance with specific orders from relevant authorities, rather than the activity of the users themselves.

One of the problems of digital legal data is accurate and comprehensive citation, and the achievement of that without complex and expensive editorial intervention. Mowbray, Chung and Greenleaf's article on the LawCite Project describes one attempt to provide a creative solution for non-profit legal information institutes (ie AustLII and other collaborating LIIs). The article describes in detail how the LawCite citator and its databases were built, using data mining and unmining techniques. As the authors point out, such techniques are essential to the architecture of the citator, but the techniques and their datasets have other valuable applications, and the authors expand on the fascinating possibilities, including use of citation data in policy debates, data visualisation of citation flows, and contextual ranking.

Legal skills education focuses largely if not entirely on textual skills: variations of reading, writing, drafting. In digital terms, legal educators tend to inhabit a docuverse, not a multiverse. Barker and Sparrow expand our focus and investigate how video review and

feedback can be a learning tool to enhance self-regulatory learning in presentation skills. Their theoretical framework, derived from activity theory, was used to analyse both data and experimental design. Analysing the qualitative research results, it was clear to the authors that more opportunities for feedback were required if self-regulation was to be achieved, and that the strategic design of educational intervention affected how both video and review technologies were used by students. As they pointed out, citing the Legal Education & Training Report, we need to give more attention to how 'skills of self-evaluation and self-management are understood and developed'.

Finally, Omotubora offers a commentary on the recent Nigerian cybercrime legislation in the context of hacking offences. She cautions against the lack of a basic hacking offence, and highlights the risks of the law being over-prescriptive by defining the specific hacking activities that constitute 'further offences'. Omotubora makes a useful comparison to the UK law in this context, and proposes that Nigeria should criminalise the act of 'basic hacking' in order to adequately respond to the threats posed by hackers, and to improve cybersecurity both nationally and internationally.

[1] Castells, M. (2000). Materials for an exploratory theory of the network society. *British Journal of Sociology,* 51, 1, 5-24; 10.