1996

Starting An Electronic Journal In Law
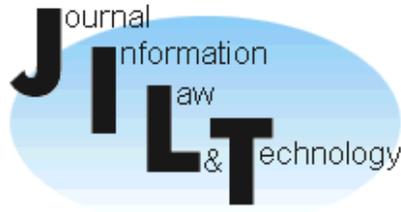
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STARTING AN ELECTRONIC JOURNAL IN LAW

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Abstract

Starting and operating an electronic journal is similar to starting and operating any journal; it is only the actual "mailing" of an electronic journal that is easier. The author discusses his experience in starting the *Journal of Online Law*, an electronic journal dealing with the legal issues of cyberspace. He describes his experience in addressing questions such as whether to charge for access, how to gain visibility for the journal, what type of articles make the most sense for electronic publication, which forms of electronic distribution make the most sense, and other issues.

1. Introduction

This article's title may be a bit of a misnomer: it suggests that general advice will be offered for any electronic journal, whereas the article in fact offers only a description of my own experiences in starting a particular e-journal, the *Journal of Online Law* or *JOL*. I hope it will nonetheless provide some practical guidance to others; in any event, I go into some detail about the decisions I made and the steps I took. I should think that most of what is said here would be relevant for any scholarly electronic journal, though other types of journals would doubtless dictate other strategies and approaches.

The easy and inexpensive part of starting an e-journal is setting up a distribution mechanism. Many people make the mistake of thinking that that is all one needs to worry about. A serious journal requires more, however.

2. Policy choices

Anyone starting an electronic journal in law has some choices to make, just as they would in starting any type of journal. There were more such choices than I had imagined at the outset. None of the choices poses an especially difficult decision, however; they are simply things that one must consider and decide before going forward.

2.1 Student or faculty edited?

In the U.S., most law reviews are produced entirely by students (which would be intolerable if it were not for the amount of work they do). One question when starting a journal is therefore: will the journal be student-edited as most such law journals are? I ended up deciding not to have *JOL* be student run. Instead, I wanted it to be different and, in this case, making the journal a faculty-edited

journal not only made it different from the usual law review, but I also think it gave the journal a bit more initial credibility.

I also wanted *JOL* to be peer-reviewed. To some extent, this is the alternative to student selection of articles, so in some sense it goes along "naturally" with the decision to make the journal faculty-edited. Most academic disciplines outside of law operate with peer-reviewed journals; following that same convention for *JOL* would therefore, I hoped, offer greater appeal to those outside legal academia.

2.2 Content questions

One has to decide what sorts of things one will publish. For example, early on I received requests to publish articles that were slated to be published months later in paper format. The authors wanted early exposure electronically, but for their "real" publication to be in print. I think there is a role for this sort of thing in the world of e-publications, but for *JOL*, I wanted a journal that was a journal in its own right. Accordingly I will not publish articles that are slated to appear elsewhere and have indeed turned down one or two things that I might otherwise have liked to publish. The pressure to obtain high quality material has led to my constantly reconsidering the policy, incidentally. I have already compromised a bit: I do allow authors to publish their articles elsewhere if (1) that publication is at least six months after *JOL*'s release, and (2) the article is substantially revised. "Revision" can include "expansion," so *JOL* seems now to be becoming a source for release of fifteen-to-twenty page essays that their authors later elaborate into fuller, law-review-style articles.

2.3 The question of subscription price

The question of charging for subscriptions can be troublesome. Some academic institutions may not permit charging; some faculty may regard it as unseemly in any event. If so, the issue goes away. If one has the option of charging, however, here are what I see as some of the considerations.

2.3.1 Pros:

Seriousness of purpose. People in some sense believe that they "get what they pay for." Asking them to pay for a journal tends to make the journal seem weightier and more serious, and that's good.

Money. It's not a bad thing to have some money coming in to fund journal expenses. (Journal expenses only, please: no holiday get-aways to the Islands.)

2.3.2 Cons:

Collecting. Web sites can be set up to include a registration procedure and presumably could therefore be "tweaked" to provide some kind of control mechanism consistent with receiving payment for accesses. But this is not the usual way of running a Web site, and hence requires more trouble and effort than a "free" site. Listservs are similar: one can certainly imagine a

listserv with a subscription list controlled on the basis of who has paid, but again, this mechanism requires some additional bother over a publicly-accessible, no-charge listserv list.

Accounting. If one takes in money, one has to account for it. Not only perhaps to the IRS/Inland Revenue/Your_Taxing_Authority, but also to subscribers who might cancel their subscription and demand a refund or a pro rata rebate. This is a nuisance unless the sums involved are large.

Policing. With digital communications on the Internet, how does one stop unlimited copying? Of course, with some commercial ventures, the money earned may be sufficient to afford extensive policing efforts. Certainly the commercial software companies have a trade association that tries to do this. But for most academics, policing unauthorized copying will be difficult at best. If some of your subscribers are honest and pay, and they learn that others are not and do not, they will be discontent.

2.3.3 Other options:

Other publishers. One can find other avenues for distribution besides "self publication." It may be that some revenue can be earned, without the headaches of accounting and policing, by convincing Lexis and WestLaw and their equivalent services to carry one's e-journal. They do carry such things already.

Shareware. I have never thought about distributing *JOL* as "shareware," but perhaps it would solve some money problems without creating too many others.

2.4 Citation questions

An e-journal is not normally paginated as such. Page numbers do not make much sense as a reference tool, so nearly all of the e-journals that I know about have adopted a paragraph numbering convention. In addition, I also adopted a citation format that relies on each article being numbered as well. To let people know how to cite the journal under this convention, I include citation instructions on every article, e.g.:

> [Cite as Fred H. Cate, *Indecency, Ignorance, and Intolerance:*
> *The First Amendment and the Regulation of Electronic Expression*,
> 1995 J. ONLINE L. art. 5, par. ___]

In the text of articles, I include the paragraph number in "curly braces," along with the abbreviation "par." The abbreviation is not essential, but while paragraph numbering is still a bit unusual for scholarly journals, I thought it helpful to readers. Here is how a typical paragraph thus appears, whether on paper or a Web site or a listserv distribution (though not in italics in the original):

> *{par. 8} Every medium of communication, according to Innis, has a*
> *bias toward either space or time which influences how it is used and*

what it is used for. If the bias is in the direction of space, it supports communication from afar and fosters links among persons separated by distance. If it is biased toward time, it encourages the preservation of information over time. ...

A general convention seems to be forming for e-journals to specify "hot links" or URL's to other Web sites in "angle brackets," as in the last line of this paragraph:

> *{par. 10} Enter the anonymous remailer. Remailers vary, but all share the common feature that they delete all the identifying information about incoming e-mails, substitute a predefined header identifying the remailer as the sender or using a cute tag such as nobody@nowhere. A list of remailers and their features, as well as current information about their recent performance statistics can be found at the University of California at Berkeley <http://www.cs.berkeley.edu/~raph/remailer-list.html>.*

2.5 Types of articles

The thought of my asking authors to write, let alone my having to edit, articles of the type typically published in American law reviews was always frightening to me. These articles are terribly long, and have terribly many footnotes. They are tedious to write; tedious to edit; and tedious to read. For years I had considered starting an e-journal and had decided not to for just such reasons—and from the conviction that no one would commit to the effort involved to write for an invisible journal.

When the idea of an e-journal in cyberlaw arose again about a year ago on the CYBERIA-L discussion list, an additional suggestion emerged: do *not* ask authors to write law-review-style articles. Rather, ask them to write much shorter, and much less heavily-footnoted, articles. In the end, this seemed like a good enough idea, and consistent enough with my own desires (which tend toward shorter, essay-style writing) that that is the policy I adopted for *JOL*.

On the whole, I think this policy is the right one for cyberspace. A long, heavily footnoted article is indeed harder to read on a computer screen than on paper. Authors do indeed have some hesitation about committing the results of prodigious effort to a new, electronic journal. Consequently, a style that features shorter essays has great appeal for all parties concerned. With the tools currently available, the fewer footnotes that have to be coded in HTML, the better!

2.6 Copyright questions

A decision not to charge a fee for access or subscription to a journal is not the same thing as dedicating the copyright to the public domain. Even the most altruistic of us would likely object to others' copying a journal and selling it to unsuspecting buyers. Whatever one's views on the matter, one must make a decision about what use of one's journal will be permitted and what will not. For good or ill, I determined that *JOL*'s copyright policy would allow personal copying and non-profit reproduction for educational purposes, but expressly deny the right to further distribute the journal by means of any sort of "bulk mailing or access" facility. That is, I would not permit other listserv lists or Web sites to handle copies. To try to make this point, I include a statement of the copyright policy along with any distribution of articles.

> **JOL Copyright Policy**
>
> Copyright to the *Journal of Online Law* as a collective work belongs to the editor. Authors retain the copyright to their individual articles, but unless otherwise noted in an individual article, all authors and the journal's editor agree to the following:
>
> **Classroom use.** Electronic or paper copies of the journal or its individual articles may be made for classroom use, provided that the copies are distributed at or below the cost of reproduction and the author(s) and the *Journal of Online Law* are credited and identified as the copyright holders.
>
> **Other uses.** The journal may be distributed by individuals to individuals for non-commercial purposes, but not by means of distribution lists, listserv lists, newsgroups, BBS postings, multiple copies, or other bulk distribution, access, or reproduction mechanisms that substitute for a subscription or authorized individual access, or in any manner that is not a good faith attempt to comply with these restrictions.
>
> **Other postings**. Because the WWW posting of the journal will likely be somewhat interactive, issues and articles may evolve and change over time. To ensure that readers are reading the up-to-date version, we ask that *JOL* not be posted on the Web except in its authorized location (<http://www.wm.edu/law/publications/jol>). But …
>
> **Links**. Links from other sites to *JOL*'s WWW and Gopher sites are encouraged.

I am not aware of any violations of the policy (it is, after all, quite easy to go "directly to the source" at no charge), but one never knows for sure what goes on where.

3. Having a presence

In addition to having a Web site for *JOL*, I was able to persuade the computer center to give me a unique e-mail address: <editor@jol.law.cc.wm>. I suppose this is the online world's equivalent to having an 800 phone number.[1] In fact, this address is simply mapped to my usual e-mail address, though I could have arranged for it to be a distinct account.

It is also quite possible, though I have not yet seen enough advantage to justify it, for one to set up on one's desktop computer a "fax back" service. Many large companies, especially those in high tech businesses, use this sort of thing. It

allows interested parties to call the company's phone number, enter a document number and a fax number through the telephone touch pad, and have the company's computer automatically send out a fax of information. This type of software is readily available for PC's and indeed came pre-installed as part of a sound card package on my own PC (a Gateway Pentium machine). The drawback is that one must leave one's PC running all the time (or limit fax inquires to certain times of the day); the advantage is the appearance of corporate "bigness." So far the drawbacks for me have outweighed the advantages, but others may conclude differently. Incidentally, I have found that under Windows 95, accepting phone and fax queries in the background does not impede my work on other things in the foreground. I would not consider such a setup under Windows 3.1.

3.1 Getting a Board of Editors

E-journals lack visibility. They are intangible. To those who read only paper publications, an e-journal is completely invisible. It's important, therefore, to think about giving a new e-journal some kind of "weight" and credibility. A board of editors, each of whom is reasonably well known, is a helpful start. Having such a board shows one's potential readers and authors all the things that having a prestigious board of editors shows for any journal or textbook series—this is a serious venture, you should therefore take it seriously, etc.—but is even more important for an e-journal.

3.2 Publicity

Any new journal has to be announced. For *JOL*, I asked the public relations people at my university (these folks are not at the law school; they do public relations work for William and Mary as a whole) to prepare a press release and distribute it to the non-academic media: local newspapers primarily. With some prodding followed by a bit of re-writing by me, they did so. One article in the local newspaper was picked up by a wire service and repeated in several newspapers across the nation. That repetition led to phone calls to me from several radio programs for interviews (by the BBC among others!) and also a series of calls from newspaper reporters. These things did a fairly good job of introducing the journal (and me as editor) to the general public. They were much less helpful in introducing the journal to the critical audience of academics and scholars. Our P.R. people made some overtures to the *Chronicle of Higher Education*, an ideal vehicle for publicity in the academic community, but these overtures were unsuccessful.

It struck me that paper publicity was necessary to reach beyond the audience of avid "on-liners." So in addition to press releases, I created a three-fold brochure using Microsoft Word for Windows and some commercially available, colorful, brochure paper that I bought myself. I mail some of these out to people who inquire about *JOL*. I also carry them with me to conferences to hand out directly. When the subject of one's e-journal comes up, it is more effective to hand out a prepared brochure than to ask the other party to scribble down a URL.

3.3 Designing the appearance and logo

I think appearance matters—especially when most academics think otherwise. I am disappointed in *JOL*'s Web page appearance (it couldn't be more boring, a defect that I hope to correct before too long), but I continue labor over the appearance of any paper photocopies. My assumption is that those who access the electronic version of the journal have a considerable incentive to do so—they are likely to be more ardent about the medium than non-Web-browsers. Whereas those who would see (and be impressed favorably or not) by a paper copy or a brochure are the very ones who need convincing that the *Journal of Online Law* is a journal of consequence.
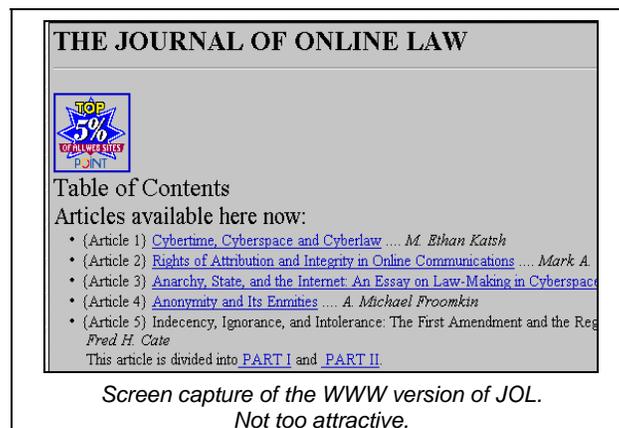
Screen capture of the WWW version of JOL.
Not too attractive.

I created a logo myself for the journal. It's obvious to me that I lack talent as a logo designer, but for now I still think it adds a note of interest. If I had the money, I would hire a graphic designer to create a better one. Computer folks tend to think that "desktop publishing" and graphics software mean that anyone can design a logo or what-have-you. If only it were true.

4. Production and distribution

At first I did everything for the journal myself. Gradually I have been able to get some student assistants. In one case, I had a student from another law school contact me by e-mail and ask if he could help. He ended up "cite checking" (verifying) all the cites in one article that were to URL's on the Web. This was quite helpful. If the journal is going to be virtual, there is no reason that some of the help cannot be from remote editors. I now also have student assistance in the

creation of HTML formatting, though for the first issue I did some of that myself, with considerable help from Tom Bruce at Cornell (thank you, Tom).

4.1 Conversion to HTML generally

There are countless HTML editors already on the market, and more coming on all the time. I don't think the mechanics of HTML will need to be a concern to e-journal editors for too much longer. For *JOL*, I use an add-on feature to Microsoft Word for Windows that allows WinWord to read and save files in HTML format. This feature works reasonably well—except for footnotes. When a Word document with footnotes is saved as an HTML file, the footnotes (you won't believe this) are all *deleted!* Consequently it is necessary to do something with footnotes first. Though it sounds a bit complicated, here is what I ended up doing: I work first in Word for DOS. I am more comfortable writing macros in DOS Word than WinWord and the former is also much faster for editing. It is especially easier to work with footnotes in DOS Word than WinWord. After editing, I run a DOS Word macro that finds the footnotes and converts them to plain text at the end of the file.

Then I would read in the file to WinWord, and save it in HTML format. Word's HTML conversion does the basic HTML coding, though it does nothing with the footnotes. At first I hand coded the HTML links for all the footnotes myself, putting in the code to jump down to, and back from, each footnote reference in the text to its accompanying footnote. Then I found a more automated way of performing this astonishingly tedious chore: I hired a student research assistant to hand-code all the HTML links for the footnotes.

4.2 Distribution and access

These days one thinks of "electronic journals" and every other Internet-related thing in terms of the World Wide Web and "home pages" and the like. The Web is, to be sure, an obvious way to make an e-journal available to the public.

On the other hand, it is quite hard to read text of any length on screen, even with the formatting that a Web document in HTML allows. Moreover, one cannot rely on a Web document's format looking the same when viewed with different browsers.[2] I concluded early on that distributing a scholarly journal on the Web therefore made sense primarily for marketing purposes: if one wants to be modern, one uses the Web. End of argument.

To make up for the mis-match between lots-of-text and on-screen-reading, I determined to offer a variety of online formats. For one, I make a point of posting a Word for Windows version of each article on the Web site. That way users who think an article looks interesting when they view it in the HTML version can download it and print it out to read on paper.

I was also aware that at the time I began to bring *JOL* into existence, not everyone had easy access to the Web. Use of the Web even for those who have it requires a certain amount of initiative as well: one must "go out and find" a document. Consequently, I chose also to offer *JOL* by means of a listserv

distribution list. That way, once someone has taken the initiative to subscribe, they will receive all future articles in their own mailbox—no "going out" to find anything. Using a listserv necessitates creating a separate copy of each article in plain ASCII. The bulk of this conversion is performed simply by saving the word processor version as plain text, though a modest amount of touch-up and re-formatting seems always to be necessary. Eventually I may add another listserv that functions solely to distribute abstracts for those who prefer to acquire only particular articles if they sound interesting.

Sooner or later, I will contact Lexis and WestLaw about having them carry the journal on their commercial services. I have not done so yet, but this is something that if successful, should greatly expand the number of *JOL* readers. I understand that they may also funnel a very modest amount of revenue one's way, based on the number of accesses.

In addition to these regular distribution methods, I use a feature of our e-mail software that allows people to request single copies of individual articles by e-mail without human intervention. This latter mechanism offers anyone with an e-mail account the option to retrieve "back issues" of *JOL* if they are not subscribers or if they missed a listserv distribution. The mechanism is fairly simple: the party desiring a copy of "Article 2,"[3] for example, sends an e-mail to my editor's address with a SUBJECT line reading "Send article 2". The e-mail software then takes care of it without my having to bother. Relatively few such requests in fact come in on a steady basis. When a discussion list such as CYBERIA-L (a separate entity from *JOL*) mentions *JOL* and I circulate instructions for retrieving back issues, however, there is a flurry of such requests for a few days.

Another very useful thing I found to do was to create a "FAQ," or list of "frequently asked questions" with answers. The most common inquiry I receive about *JOL* is an e-mail request for instructions on how to get access to the journal. The FAQ I created explains what the journal is, the different ways that one can access or subscribe to it, how one can unsubscribe, how to obtain back issues, and so forth. For nearly all inquiries, I can reply with a short line or two and a copy of the FAQ. It saves an enormous amount of time.

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Frequently Asked Questions about
the Journal of Online Law
(rev'd November 27, 1995)
=================================

1. How can I subscribe to JOL?
----------------------------
  Send an e-mail message to:
      listserv@listserv.cc.wm.edu

  Make the *BODY* of the message read:
      subscribe jol Marion Smith

  where you replace "Marion Smith" with
  your own name.

     . . .

3. How can I get plain ASCII copies if I was not
a subscriber or missed a distribution?
------------------------------------------------
  Send an e-mail message to:
      Editor@jol.law.wm.edu

  With the *SUBJECT* line of the message reading:
      Send article 1
        or
      Send article 2
        etc.
```

Sample Q & A from the JOL "FAQ"

5. Dealing with authors

Without question, the hardest thing about any journal is finding interesting and high-quality articles to publish. The number of journals in the U.S. alone must

be in the thousands—and they are all competing for good content. The eager authors are the junior ones, but they tend to prefer to publish in "recognized" journals. Commonly, "recognized" journals are neither new nor electronic. Senior level faculty have more luxury to "gamble" on less well recognized publication outlets—but then, they are not as hungry to get published in the first place! So it's quite a problem.

For *JOL*, I frankly started by pleading with several people I knew personally to write something. These were people who I knew would produce something of quality if they would agree to do it. Fortunately, all of those I approached were willing. Several of these early authors had already agreed to serve on the editorial board of *JOL*, so perhaps they felt an additional sense of obligation.

I had hoped that after the kick-off issue of *JOL* was released, unsolicited articles would start to flow into my e-mail box like a mighty river. That way I would not have to seek out individuals and beg them to write. Instead I would spend my time deciding which of dozens of good articles was really the best.

In the U.S., we characterize this kind of thinking with the expression "fat chance." That is, things did not exactly work out the way I had hoped. Over the last year, I have received no more than three or four unsolicited articles, none of sufficient scope or quality or interest to publish. On the other hand, I have not been turned down very many times when I have solicited articles. I have so far confined my requests almost exclusively to people I know personally; I hope that *JOL* will gain substantially more visibility (and hence attract unsolicited articles) in the next year or so before I exhaust my list of friends.

Peer review

For the few unsolicited articles that have come in, I have begun to develop a procedure for seeking peer review. Two outside reviewers are the norm; reviewers are authors are unknown to each other (double-blind review). I try to confine my correspondence with reviewers and authors to e-mail to save time and effort. I will, of course, use paper mail if that is desirable for anyone. Reviewers receive a peer review form to use, borrowed (one might even say "copied") from another journal. I have even been able to send this form (created in Word for Windows, using Word's "fill-in-the-forms" feature) as a file to a reviewer over the net, who then filled it in and returned it similarly.

Screen capture of what became the paper photocopied version of the first issue of JOL
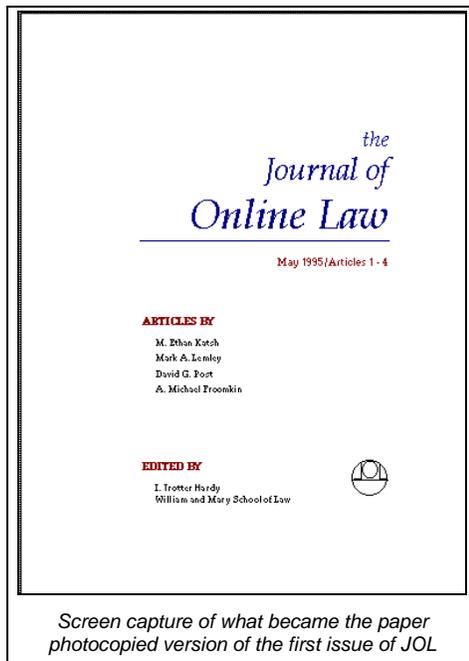
Reprints for authors

Here is a silly but important facet of e-journal life: authors like to have reprints—tangible things that they can hand to those who are not computer-literate, and even to those who are. A physical copy of an article in one's hands has a real presence and heft; it can also be read immediately on receipt (unlike a URL cite).

Consequently, I make a point of producing photocopies of *JOL*'s articles in as attractive a format as I can muster. I send each author five to ten copies of this paper version of the journal. Though I have not received much explicit commentary on this technique, it is my impression that giving authors, especially junior ones who need to impress senior colleagues, this form of "reprints" is extremely helpful. On many occasions I have also handed out or mailed these paper copies to those who inquire about *JOL*.

Listserv subscribers

I don't have ready access to the list of national abbreviations commonly used on the Internet (.UK=United Kingdom, .IT=Italy, .DE=Germany, etc.). For that matter, these abbreviations are not guaranteed to reveal the actual nationality of anyone using them, and in addition, some abbreviations do not even purport to identify nationality (.COM, for example). Nonetheless, for what it's worth, I periodically record the list of these abbreviations for subscribers to the plain ASCII, listserv version of *JOL* (this has nothing to do with the number or origin of Web page hits).

As of February 20th, there appear to be at least some thirty different countries represented among the journal's subscribers (out of a total of just under a thousand subscribers).

Here is the breakdown—again, with no warranties, express or implied, that this represents anything other than the last two or three letters of the e-mail addresses of *JOL* listserv subscribers:

AR	1	DK	3	NL	10	ZA	1
AT	3	EG	1	NZ	8	COM	422
AU	29	FR	3	PH	1	EDU	221
BE	2	HK	4	SE	1	GOV	37
BR	5	HU	1	SG	2	LEG	1
CA	31	IE	3	TH	1	MIL	2
CH	2	IL	1	TR	1	NET	80
CR	1	IS	2	TW	1	ORG	39
CZ	2	IT	4	UK	18		
DE	32	JP	3	US	10	**Total**	**989**

Current Web site accesses

I have just recently begun to arrange for the colleciton of statistics on the number of accesses to *JOL*'s Web site (<http://www.wm.edu/ law/publications/ jol>). At this early stage, it appears that the site is getting about 25 to 30 hits a day.

Overall advice

A popular series of commercials on American television advertises the Nike brand of athletic apparel with the phrase "Just do it!" Personally, I do not respond well to the sight of grimly determined, frighteningly muscular bodies leaping across my screen in postures that are foreign to me. Yet, despite my hostile reaction to the "just do it" mantra, I think it is actually sound advice for anyone contemplating the creation of an electronic journal. The hard work in starting any journal—making policy decisions, soliciting articles, arranging for peer review, etc.—is well within the capability of law faculty or practicing lawyers. The expensive parts (handling subscriptions, arranging for publication and distribution) are largely avoided with electronic publication, particularly publication without a charge for access. Best of all, one doesn't really need a lot of authorization from others to "just do it." I sought neither funding nor approval ahead of time, assuming that both would come later if needed. Because not much of either is really required in the electronic world, the assumption proved to be reasonable.

End Notes

[1] In the U.S., businesses of any size usually have a free long distance calling number; these numbers begin with the area code of 800.

[2] Editorial comment: The fact that the end users of a browser can set their own choice of color, fonts, and the like is usually regarded as a strength of HTML It is not. It would only be a strength if end users typically had greater expertise in graphic design than the document's creator—and as a general matter this seems most unlikely.

[3] It has been suggested to me that an international journal should not refer to its contents as "articles" because that is the term commonly used in the EU to refer to statutory provisions. If I were doing it over, I might strive to find another word, though in the U.S. (my primary audience) the term "articles" is reasonably clear.