The Blogosphere and the New Pamphleteers

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The Blogosphere and the Law

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Introduction and Overview

The latest form of publication has nothing to do with paper. The blogosphere has become the new avenue for individuals to “spread the word” or spread ideas or opinions.1 Much like — but more sophisticated than — the printing press, the internet allows every individual to be a pamphleteer in the marketplace of ideas by blogging.2 And for the past several years, the blogosphere’s scope — in production and consumption — has been increasing exponentially.3

The mass distribution available through the internet makes someone’s possible influence more powerful, perhaps more powerful than even the traditional media that has had decades to establish itself as the reservoir of the provision of news and ideas.4 Traditional media is no longer fully in charge of information flow.5 The blogosphere allows anyone to be a publisher, anyone to be an author, anyone to have their own imprint, and anyone to have their own broadcast.6 With pamphlets and similar older forms of communication everyone can write, everyone can turn out a publication on a printing press and thus be his own publisher, anyone can imprint his name or brand on the pamphlet, and everyone can then cry out, broadcast, and distribute that pamphlet in the public square. Now, we can avoid the elements and do all the same from our couches.

It creates a potentially innumerable body of a “listening assembly.”7 From the analogous insights of Alexis de Tocqueville, “Feelings and opinions are recruited, the heart is enlarged, and the human mind is developed only by the reciprocal influence of men upon one another.”8 Anonymously, pseudonymously, or identified — through a long history of pamphleteering now based in new tech-

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nology – bloggers are a powerful force in the distribution of information and ideas and the creation of communities of conversation – even among individuals who have never met or may never meet in person.9

Reputational indicia in the blogosphere relies less on being a highly subscribed Gray Lady (The New York Times) than being "visited," plus receiving listings on other blog rolls so that "hits" and traffic are directed to your little space of the blogosphere – piggybacking on the hits of another but also profiting from the signaling function that the other provides by the listing.10 As Hewitt has stated, "The information monopoly, especially in the world of politics, is shattered because the gatekeepers have lost their authority."11 There is a new game in town in the supply of information, and its name is the blog. People become surfersby, or habitual readers create "traffic" based on the value of the content provided.12 And the blog commodities and their value is diversified due to the high multitude of sources in this information market.13

Throughout history, the dissemination of information, news, opinions, and ideas has continuously transformed. In the 18th Century, there was the town crier, the pamphleteer, hand-billing, leafleting and the emergence of the newspaper. Later, radio and then television emerged in the 20th Century. There has been a constant advancement in the dissemination of information, and the internet is the latest medium.14

One of the most modern developments and revolutions in the dissemination of information, news and opinion is the internet weblog – or blog15 – which is essentially today's highly democratic and accessible version of the pamphleteer16 and great equalizer by providing a venue where all can distribute their thoughts.17 Spontaneous order is at play in this modern marketplace of ideas, where consumers of information sometimes rely on trust and validation from fellow internet travelers. The blogosphere is truly a transformation and a popular revolution in the provision of information.18 Information flow is a highly valuable concept,19 and in a marketplace of information, the cream of the crop rise to the top. That is why some blogs are simply rants20 or of interest to few that add little or no value, and others establish reputational value that leads to high visitation rates and wide attention. Just like the price system in a normal marketplace, reputation matters, and the value of a commodity is determined by the level of consumer demand and respect.21

This Article argues that the blogosphere is merely a technological transformation22 and stimulus of traditional pamphleteering – an individual's opportunity to introduce his ideas to the community.

History of the Pamphleteer

Pamphleteering – the distribution of ideas on law, social policy, politics, revolution, social change, and other subjects – has a long history.23 Thomas Paine's Common Sense24 and The Federalist Papers25 are arguably the most revered and sustaining successes in "pamphleteering" in America. Pamphlets
can be a highly influential mechanism of expression, whether they are sophisticated or quite amateur.\textsuperscript{26} As the Supreme Court has stated: “Anonymous pamphlets, leaflets, brochures and even books have played an important role in the progress of mankind.”\textsuperscript{27} The internet is simply a similar modern distribution system. Some bloggers expose themselves yet many operate by pseudonyms and a shield of anonymity.\textsuperscript{28} Either way, they are information providers, and their influence and validity depends on consumer demand and trust.

The rise of newspapers had a similar effect as pamphlets and now blogs. People “subscribe” to or “visit” those sources that contribute to one’s edification on societal events. Pamphlets can be distributed far and wide, and newspapers can similarly create wide dissemination of ideas, and now the internet. Alexis de Tocqueville could just as well have been talking about blogs when he described the beneficial effects of newspaper circulation – after all, the internet is our new means of wide circulation:

[A newspaper] causes political life to circulate through all the parts of that vast territory. Its eye is constantly open to detect the secret springs of political designs and to summon the leaders of all parties in turn to the bar of public opinion. It rallies the interests of the community round certain principles and draws up the creed of every party; for it affords a means of intercourse between those who hear and address each other without ever coming into immediate contact.\textsuperscript{29}

The internet demonstrates that de Tocqueville’s observation that “nothing but a newspaper can drop the same thought into a thousand minds at the same moment,”\textsuperscript{30} is no longer true.

The blogosphere provides for the dissemination of information and ideas in the tradition of pamphlets or newspapers\textsuperscript{31} and allows individuals and “wandering minds” to learn, debate, converse and combine. It serves as an elimination of isolation and a facilitator of association.\textsuperscript{32} The blogosphere brings strangers and friends alike together for discussion and reflection.\textsuperscript{33}

**Why Bloggers Resemble Pamphleteers**

Rather than standing on a street corner and reaching passersby to circulate one’s words, the blogger sits at his desk or couch and reaches potentially millions of surfersby with his words. “Liberty of circulating is as essential to that freedom as liberty of publishing; indeed, without the circulation, the publication would be of little value.”\textsuperscript{34} The internet advances this liberty. The blogosphere furthers a marketplace of publishing that is an important combatant against the monopoly of information available to society.\textsuperscript{35}

Pamphlets were one of the first means of distributing information and one’s personal ideas. Hundreds of years later, the internet facilitates the same purpose with substantially diminished transaction costs and monumentally increased circulation. Bloggers are indeed pamphleteers.\textsuperscript{36}

A pamphlet is a written means of distribution of information or ideas. It requires effort in drafting, effort in
printing, and then effort in distribution. Bloggers simply perform the same tasks but with tapping into the benefits of modern technology.

Pamphleteering in the traditional sense continues today; but before the advent of modern technology it was a primary mechanism for an individual to influence public opinion. The fact is that individuals may never hear about an idea or issue if it is not circulated. Pamphleteering decreased information costs and transaction costs in the acquisition of information. If a pamphleteer had nothing useful to say, few would read and many would ignore. This is equally true of large or small snippets broadcast out on the internet.

As much as Thomas Paine, bloggers circulate their ideas in a compact form on the worldwide street corner through a laptop. Moreover, just as one might read a pamphlet and then pass it on to another with recommendation, the internet allows redistribution through emails to compatriots or simply links to reputable and recommended bloggers on one’s own site. Just like “passing around” a pamphlet after reading it and being moved, intrigued or informed by it, one can pass around certain blog posts or the identity of an interesting site.

**The Unique Contribution of Legal Bloggers**

We must admit that there are varying degrees of quality amongst blogs. With ease of access comes a flood of content; some of the most useful blogs amidst the flood come from law professors and other legal commentators. The pamphleteer was providing what he believed to be useful but concise information to shape public opinion. There is certainly a role for that in the understanding of the law. There is a tremendous amount of legal information and developments that occur every day, and legal bloggers serve a valuable role in discerning what is relevant or important, and they often do so nearly simultaneously with the development rather than waiting weeks or months to have the analysis or opinion published in print form. With specialized and generalized sites, legal individuals can use the information or ideas as a launching point for further inquiry, *i.e.* become alerted to an issue that might serve a client interest, as an idea for future scholarship, as a contribution to current scholarship, as supplemental information for class instruction or simply as a means of staying current. Some have analogized the legal blog to the clipping services or email alert mechanisms that serve them well to remain current.

There are many categories of blogs, and perhaps this is biased but one of the most influential and useful categories of blogs involve legal issues — keeping people inside and outside the legal profession abreast of developments in the law. With fifty state jurisdictions, the U.S. federal system, and the international realm, there is an overwhelming amount of information for legal academics and practitioners to discover. Blogs serve as an information filtering and clearing-
house system to obtain information and commentary on recent developments.

Blogs also provide a valuable community of communication, important in general but especially important in a legal environment that must continuously remain updated on developments and informed by those who comment thereon. Blogs also provide, therefore, a means to forge relationships within our profession. Yet another utility is to allow a powerful venue for uniting people around common causes.

Legal academicians have a unique responsibility to use this new communication tool responsibly. The intricacies of the law should not be taken lightly. Similarly, consumers of blogs must be cautious regarding their confidence in their reliance on information provided.

Thus, filters become important. But as in any marketplace, this idea and information market has consumption that is correlated with the value of its content. As a result, the consumers spontaneously create the filters that determine that value and directly affect consumption or receptors of information, or visits to the content in any particular blog. And the negative externalities on one's legal career and reputation should serve as a deterrent against legal writers/contributors/bloggers irresponsibly or uncarefully wording posts – deterrents that do not necessarily exist for your average-joe blogger.

While legal scholars provide much utility to the legal community and the public at large by blogging, a few final concerns should be heeded regarding blogs for the legal academic. First, the medium and its ease and accessibility undoubtedly invites some sloppiness, knee-jerk commentary, and lack of research or reflection. This caution goes for writers and commenters. Second, legal scholars should have a cognizance that they are creating a record, necessitating a carefulness in what they say to be sure it is not something they might later regret. The third issue involves a consideration of opportunity costs. To the extent one spends time blogging, he is not spending time developing traditional scholarship. Time is limited, and to blog right, sufficient time must be expended.

This Author has often thought about blogging, but been deterred by the fear that it would distract from the ability to devote sufficient time to writing law review articles that may or may not serve a more influential effect on the law. It takes a great deal of work to blog well, and there is little point in blogging if you are not going to commit to doing it well. Unless you devote sufficient time to add content on a regular basis, you will not have regular visitors, will not provide useful content and will not develop the reputational value to make it worthwhile. Nonetheless, I am benefited almost every day by the legal bloggers that provide information that I might have never known, or at least sooner than I otherwise would have known.

Conclusion

Legal bloggers have the ability to influence opinions and provide valuable information on developments in the law, commentary on legal rules, notifications
of new scholarship and many other tools. As stated at the outset, some of the most influential pamphleteering was used to analyze and shape the law. Law is an evolutionary regime and is served well by evolutionary technologies like the blogosphere, where the new pamphleteers can find their voice.

Notes

1 “Blogs” refers to “weblogs” — Internet publications:

consisting primarily of periodic articles . . . Blogs range in scope from individual diaries to arms of political campaigns, media programs, and corporations. They range in scale from the writings of one occasional author (known as a blogger), to the collaboration of a large community of writers. Many weblogs enable visitors to leave public comments, which can lead to a community of readers centered around the blog; others are non-interactive."

Blog, WIKIPEDIA: THE FREE ENCYCLOPEDIA, http://en.wikipedia.org/wiki/Weblogs (last visited, Mar. 22, 2006). See also NEWTON'S TELECOM DICTIONARY 115 (19th ed. 2003) (a blog is “a type of online, hosted chatroom usually devoted to a specific subject the host wants to discuss. . . . [B]loggers are often passionate, if not fanatical, about the subjects they cover.”). Many blogs have specialized professional uses.

As one commentator explains:

“The blogosphere — which is the name given to the entire internet community of blogs — is part of the infrastructure by which political ideas are developed and communicated. Blogs are like small radio stations or small circulation newspapers: they are influencers of opinion.”

Hugh Hewitt, Blog: Understanding the Information Reformation That’s Changing Your World App. A, at 192-93 (2005) (quoting Hugh Hewitt, If It’s Not Close They Can’t Cheat: Crushing the Democrats in Every Election and Why Your Life Depends on It chap. 32 (2004)). See also id. at 186 (“Like a reverse Atlantis, a new archipelago of opinion and news providers has risen up from nowhere to drive stories and news cycles.”) (quoting Black Blog Ops, Daily Standard, June 17, 2004); Stephen Levy, Will the Blogs Kill Old Media?, Newsweb, May 20, 2002, at 52 (“A blog is an easily updated Web site that works as an online day book, consisting of links to interesting items on the Web, spur-of-the-moment observations and real-time reports on whatever captures the blogger’s attention.”).

2 Id. at 154 (“now that writers and reporters, pundits and everyone with a keyboard has access to publishing technology there are no gates to keep, no power to say no to anyone.”). See also, e.g., Eugene Volokh, CHEAP SPEECH AND WHAT IT WILL DO, 104 YALE L.J. 1805, 1846-47 (1995) (same); Jerry Berman & Daniel J. Weitzner, ABUNDANCE AND USER CONTROL: RENEWING THE DEMOCRATIC HEART OF THE FIRST AMENDMENT IN THE AGE OF INTERACTIVE MEDIA, 104 YALE L.J. 1619, 1624 (1995) (arguing that the web diminishes economic barriers to participation and entry to this marketplace); Jeffrey Rosen, THE END OF OBSCENITY, BALT. SUN, June 28, 1996, at 15A (“The [Internet is] reducing the costs of entry for both speakers and listeners and creating relative equality among [participants, helping fulfill . . . a perfectly deregulated marketplace of ideas.”).

3 See, e.g., Ken Ebanks, INTO THE BLOGOSPHERE: MANAGING THE RISKS AND REWARDS OF EMPLOYEE BLOGGING, 22 NO. 10 COMPUTER & INTERNET LAW 1 (Oct. 2005) (“As of January 2005, the Pew Internet & American Life Project estimated that there were more than 8 million blogs on the Internet, with nearly 50,000 more coming online each day, and that as many as a quarter of all US adults read blogs on a regular basis.”); Michael Tonsing, ARE YOU READY FOR A BLOG OR A BLOGER?, 50-MAY FED. LAW. 14 (May 2003) (“Some Internet industry sources say that the number of blogs is increasing at a rather astonishing rate of about 25 percent per year. Blogs create an alternative universe that is a kind of flea market for ideas.”).


Exemption to Online Political Speech, 9 VA. J.L. &
Tech. 6, 67 (2004) ("individuals have been prolific
publishers of news, commentary, and editorial con-
tent online without distributing that content
through traditional media outlets").

6 Anthont E. Varona, Changing Channels and
Bridging Divides: The Failure and Redemtion of
American Broadcast Television Regulation, 6 MINN.
J. L. SCI. & TECH. 1 (2004) ("A.J. Liebling said that
‘freedom of the press is guaranteed only to those
who own one.’ Today, access to the internet is tan-
tamount to owning one’s own ‘press.’ Indeed, blog-
gers and their blogs are changing the face and
definition of the modern press.").

7 ALEXIS DE TOCQUEVILLE, 2 DEMOCRACY IN
AMERICA 182 (1840) (Phillips Bradley ed., Vintage
Classics 1990) ("The words of one strong-minded
man addressed to the passions of a listening assem-
by have more power than the vociferations of a
thousand orators; and if it be allowed to speak
freely in any one public place, the consequence is
the same as if free speech was allowed in every
village.")

8 Id. at 108-09.

9 De Tocqueville explains the same in relation
to newspapers, and the internet simply supple-
aments and amplifies this valuable goal:

In order that an association among a dem-
ocratic people should have any power, it
must be a numerous body. The persons of
whom it is composed are therefore scatter-
ted over a wide extent, and each of them
is detained in the place . . . Means must
then be found to converse every day with-
out seeing one another, and to take steps
in common without having met. Thus
hardly any democratic association can do
without newspapers.

Id. at 112.

10 Daniel Kearn, Note, Network Effects and
the Emerging Doctrine of Cybterspess, 23 YALE L.
& POL’Y REV. 313, 316 (2005) ("In the same way,
linking is a central part of the phenomenon of web
logs . . . . Content originators are generally happy to
have their information disseminated as widely as
possible, and information aggregators attract valu-
able visitors to their site. Consumers, meanwhile, get
information tailored to their tastes.")

11 Hewitt, supra note 1 at 108. See also Jack M.
Balkin, Digital Speech and Democratic Culture: A
Theory of Freedom of Expression for the Information
Society, 79 N.Y.U. L. REV. 1, 7 ("the development of
weblogs (or blogs) allows people to publish content
to the Internet with the press of a button, lowering
the costs of publication and distribution even fur-
ther.").

12 Analogously, de Tocqueville spoke the same of
newspapers. DE TOCQUEVILLE 2, supra note 7 at 113
("Newspapers increase in numbers, not according to
their cheapness, but according to the more or less
frequent want which a great number of men may feel
for intercommunication and combination . . . A
newspaper, therefore, always represents an associa-
tion that is composed of its habitual readers.").

13 Cass R. Sunstein, Group Judgments: Statistical
Means, Deliberation, and Information Markets,
80 N.Y.U. L. REV. 962, 1022 (2005) (describing the
supply and demand of information and the resem-
bance to traditional markets in other valued com-
modities.).

14 Hewitt, supra note 1 at 175 ("Something very
big is happening here, as was the case when radio
gave print a big elbow, and the when television gave
radio a huge body blow.").

15 William Safire, The Way We Live Now, N.Y.
TIMES MAG., July 28, 2002, at 17 ("the noun blog is a
useful addition to the lexicon").

16 For general discussions on the role of bloggers
as today’s pamphleteers, see generally David Mc-
Gowan, Approximately Speech, 89 MINN. L. REV.
1416 (2005); Molly Shaffer Van Howeling, Distribu-
tive Values in Copyright, 83 TEX. L. REV. 1535
(2005); Ige Omatako Bolodeuku, Corporate Speech
in a Democracy: What Can Nigeria Learn From
Abroad?, 13 CARDozo J. INT’L & COMP. L. 61 (2005);
William E. Lee, Lonely Pamphleeters, Little People,
and the Supreme Court: The Doctrine of Time,
Place, and Manner Regulations of Expression, 54
GEO. WASH. L. REV. 757 (1986); Norman W. Spaul-
ding, The Discourse of Law in Time of War: Politics
and Professionalism During the Civil War and Re-
construction, 46 WM. & MARY L. REV. 2001 (2001);
Marvin Ammori, Another Worthy Tradition: How
the Free Speech Curriculum Ignores Electronic Me-
dia and Distorts Free Speech Doctrine, 70 MO. L.
REV. 59 (2005); Jeffrey Stephan Sobek, Balancing
Individual Privacy Rights and the Rights of Trade-
mark Owners in Access to the Whois, 38 J. MAR-
SHALL L. REV. 357 (2004); Christopher Zubowicz,
The New Press Corps: Applying the Federal Election
Campaign Act’s Exemption to Online Political Speech,
9 VA. J.L. & TECH. 6 (2004); Frederick
Schauer, Towards an Institutional First Amend-
ment, 89 MINN. L. REV. 1256 (2005); John Di Bari, A
Survey of the Internet Jurisdiction Universe, 18
N.Y. INT’L L. REV. 123 (2005); David D. Smith III,
A New Framework for Analyzing Gag Orders Against
Trial Witnesses, 56 BAYLOR L. REV. 89 (2004); John
J. Brogan, Speak & Space: How the Internet is Go-

17 Selected Reading, 22 NO. 24 LAW. PC 15, Sept. 15, 2005 (“One of the driving ideas behind blogs,” Cogley says, “is anyone from A-list celebrities to the pizza guy has an equal opportunity to publish thoughts, ideas, and images the entire online community can access.”). See also de TOCQUEVILLE 2, supra note 7 at 114. (“The power of the newspaper press must therefore increase as the social conditions of men become more equal.”).

18 Laura DiBiase, To Blog or Not to Blog?, 24- NOV. AM. BANKR. INST. J. 32 (Nov. 2005) (“Blogs have become so popular that Merriam-Webster declared “blog” as the word of the year in 2004. Various sources estimate the number of Web logs on the Internet to be anywhere from 8-30 million. . . . There are thousands of blogs that deal with legal issues . . .”).

19 See also de TOCQUEVILLE 2, supra note 7 at 185-86 (“the intelligence and the power of the people are disseminated through all parts of this vast country and instead of radiating from a common point they cross each other in every direction.”).


21 Jefferson Lankford, To Blog or Not to Blog, 40-FEB ARIZ. ATT’Y 10 (Feb. 2004) (“Blogs’ . . . are exploding in popularity. . . . [B]logs are cool or silly, informational or unreliable.”).


24 Robert C. Berring, Deconstructing the Law Library: The Wisdom of Meredith Willson, 89 MINN. L. REV. 1381, 1405 (2005) (“Thomas Paine’s Common Sense was a pamphlet that changed the course of the history of the United States . . .”).


[T]he practice of persons sharing common views banding together to achieve a common end is deeply embedded in the American political process. The 18th-century Committees of Correspondence and the pamphleteers were early examples of this phenomenon and the Federalist Papers were perhaps the most significant and lasting example.

Id.

26 As one author has stated:

From pamphlets may be learned the genius of the age, the debates of the learned, the beuves of government, and mistakes of the courtiers. Pamphlets furnish beaus with their airs; coquettes with their charms. Pamphlets are as modish ornaments to gentlewomen’s toilets, as to gentleman’s pockets: they carry a reputation of wit and learning to all that make them their companions.

Myles Davis, Icon Libellorum (1715), as quoted in H.L. Mencken, A New Dictionary of Quotations on historical principles from Ancient and Modern Sources 883 (Knopf ed. 1991) (1942).


29 Alexis de TOCQUEVILLE, 1 DEMOCRACY IN AMERICA 187-88 (1840) (Phillips Bradley ed., Vin-
tage Classics 1990). See also de Tocqueville 2, supra note 7 at 56 (“The only authors whom I
acknowledge as American are the journalists. They indeed are not great writers, but they speak the lan-
guage of the country and make themselves heard.”); Id. at 112 (“newspapers make associations, and as-
sociations make newspapers”).
30 de Tocqueville 2, supra note 7 at 111.
31 Id. at 111-12. In historical context, de Toc-
quieville’s observations on combination serves well:

In democratic countries . . . it frequently
happens that a great number of men who wish or who want to combine cannot ac-
complish it because as they are very insignif-
nicant and lost amid the crowd, they
cannot see and do not know where to find
one another. A newspaper then takes up
the notion or the feeling that had occurred
simultaneously, but singly, to each of
them. All are then immediately guided to-
wards this beacon; and these wandering
minds, which had long sought each other
in darkness, at length meet and unite.
The newspaper brought them together,
and the newspaper is still necessary to
keep them united.

Id.
32 Again, de Tocqueville’s words on association
in America are quite apt:

As soon as some of the inhabitants of the
United States have taken up an opinion or
a feeling which they wish to promote in
the world, they look out for mutual assis-
tance; and as soon as they have found one
another out, they combine. From that mo-
moment they are no longer isolated men, but
a power seen from afar, whose actions
serve for an example and whose language
is listened to.

Id. at 109. He continues:

In their political associations the Amer-
cans, of all conditions, minds, and ages,
daily acquire a general taste for associ-
ation and grow accustomed to the use of it.
There they meet together in large num-
bers, they converse, they listen to one an-
other, and they are mutually stimulated
to all sorts of undertakings.

Id. at 119.
33 Id. at 115 (“political life makes the love and
practice of association more general; it imparts a de-
sire of union and teaches the means of combination
to numbers of men who otherwise would have al-
ways lived apart.”).
34 Lovell v. City of Griffin, 303 U.S. 444, 452
(1938).
35 de Tocqueville 1, supra note 29 at 185. (“The
liberty of writing, like all other liberty, is most for-
midable when it is a novelty, for a people who have
never been accustomed to hear state affairs dis-
cussed before them place implicit confidence in the
first tribune who presents himself.”).
36 Court Outlines Standard for Unmasking Blogger of Criticism of Public Figure, 22 NO. 12 Com-
puter & Internet Law. 25 (Dec. 2005) (“Internet
speech in blogs or chat rooms in some instances
could become the modern equivalent of political
pamphleteering.”).
37 See http://3lepiphany.typepad.com/3lepiph-
any/2006/02/academic_blogs.html (compiling a list
of blog posts on academic blogging) (last visited 3/
20/06); http://www.concurringopinions.com/
archives/2006/03/law_professor_b_4.html (compil-
ing a “census” of law professor blogs) (last visited 3/
20/06).
38 Jason Krause, Flogging the Blogger, 3 NO. 15
have become a popular way for lawyers to keep up
with legal news and trends.”); Robert J. Ambroggi, IP
Blogs: Pocket Parts for a Digital Age, 61-NOV
Bench & B. MNN. 14 (Nov. 2004) (“For lawyers in
many fields, blogs are becoming the new pocket
part. With their immediacy and focus, they provide
up-to-the-minute news and analysis of judicial, leg-
islative and regulatory developments.”); T. Evan
Schaeffer, What Weblogs Can Do For You, 92 I.J.
B.J. 269 (May 2004). See also generally David
Narkiewicz, Blogs, Bloggers and Blaughs, PA. LAW.,
May-June 2003, at 49.
39 Carole Levitt et al., Keeping Up-to-Date With
Blogs, 27-DEC L.A. LAW. 47 (Dec. 2004) (“For years,
attorneys have used clipping and alert services pro-
duced by database vendors to keep current on pro-
essional issues . . . . The news, information, and
commentary provided by blawgs can provide infor-
mational support to attorneys who practice in the
same areas of law.”).
40 See Bruce Moyer, Who Let the Blaughs Out?,
51-APR Fed. Law. 10 (Mar.-Apr. 2004):

There’s an Internet phenomenon that’s
sweeping across the info-terrain of the le-
gal and political world. Free-form Web
sites are springing up that offer an ex-
traordinary range of news, information,
and commentary. They’re called blogs,
and they’re becoming an increasingly val-
uable tool for lawyers who want to remain
up-to-speed with the latest developments in the law and their specialty areas. . . .

Blogs are growing in numbers in all fields because they give experts and pundits the capacity to circumvent traditional media outlets and publish content and commentary, ranging from informative updates and Web links to introspective musings and agitated rants. . . . The real verve and action is on legal-related blogs, inevitably called “bloggs” . . .

Id. (emphasis added).

41 Consider the discussion of the internet facilitating community in, for example, Barry Well & Milena Gulia, Virtual Communities as Communities, in Communities In Cyberspace 167, 171 (Marc A. Smith & Peter Kollarck eds., 1999); Peter Kollock & Marc Smith, Communities In Cyberspace, id. at 3, 17-18.


43 David R. Johnson et al., The Accountable Internet: Peer Production of Internet Governance, 9 VA. J.L. & TECH. 9, 49 (2004):

It is worth observing that we have always had various weak forms of decentralized decision-making regarding online connections. Individuals have always been able to decide not to go to particular web sites. After all, a link is a form of “recommendation” from a source—a source that we may not trust or be able to identify. Individuals are already able to decide not to open email they do not expect. Blogs work well because they give us reasons to go to particular online sources, based upon pointers from people we already consider reliable judges of value.

Id.

44 Mark L. Movsesian, Introduction: A Good Idea, 33 HOFSTRA L. REV. 1121, 1121-22 (2005) (“To some degree, Internet blogs have begun to fill the need for short legal commentary. Blogs can be valuable additions to scholarly discourse, but they have their own drawbacks. They are ephemeral, they sometimes lack academic rigor, and they are easily lost in the vastness of the blogsphere.”). Larry Ribstein put this cautionary note well:

Like all speech, blogs can cause emotional harm [and] reputational damage, [and can] mislead and defraud. The particular problem with blogs is that they are not intermediated — they are simply individuals talking, amplified by the megaphone of the Internet. . . . As Jonathan Klein, now president of CNN, famously said, “[b]loggers have no checks and balances. . . . [It’s] a guy sitting in his living room in his pajamas.”


46 Id.

47 Judge Richard Posner has expressed a similar concern:

“People are getting so impatient and electronically oriented that they are not paying as much attention to the print media,” and “[If you confine your writing to print media, you’re missing a lot of people” . . . . [Posner continued that] “What worries me about the phenomenon is the time being consumed,” says Posner. “There’s a lot of interesting material in the blogs and comments, but is it the best use of time?” . . . “You have an accumulation of ideas you can express, but if you did it week after week, you’d have to keep generating new ideas,” Posner says, “which means you’d not only have to spend a lot of time actually writing the blog, but doing the research and constantly renewing your thoughts.”