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Book Review

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BOOK REVIEW

LAW IN A DIGITAL WORLD *by M. Ethan Katsh.* Oxford University Press, 1995. 294 pages.*

Reviewed by Suzanne Ray Miller†

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I. INTRODUCTION

As computers replace dictaphones in law firms and law students enjoy access to Westlaw and LEXIS,[1] information technologies are now everyday tools in the legal profession. M. Ethan Katsh argues in his latest book, *Law in the Digital World*[2] (hereinafter *Digital World*), that this transformed legal environment is part of a larger societal shift from a print culture to an electronic one. However, since attorneys practice a profession that emphasizes predictability and permanence over change and flexibility, they fail to appreciate the depth of this shift or take full advantage of it.

In the introduction Katsh sets forth four ways in which information will change as result of technology. First, people will distribute information electronically, in faster and more flexible networks than the traditional postal system. For example, instead of drafting a single document that all recipients will read, the information may be easily tailored for individual people or groups. Second, people will work with information interactively. Rather than simply reading or writing information, readers will be able to change formats and manipulate the data they receive. Third, it will be easier for users to communicate in nontextual formats; symbols, graphics, and images will be sent as eas-

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† B.A., University of California at Davis; J.D., Santa Clara University of Law, 1996.
1. Westlaw and LEXIS are on-line services that provide legal research sources such as cases, statutes, treatises, and law reviews.
2. M. ETHAN KATSH, LAW IN A DIGITAL WORLD (1995).

ily as text. Lastly, information will be organized and accessed in non-linear modes, using tools such as hypertext.

Katsh provides a guide into this transformation by examining its progress and framing the issues attorneys will confront in the future. The author weaves together several premises to explore the nature of this transformation, but unfortunately he never presents his ultimate thesis in a succinct manner. Instead, the reader must discern Katsh's theories through his treatment of several topics spread over eight chapters. The topics range from definitions of certain technologies (such as computer networks and hypertext) to explanations of relevant legal doctrines (such as copyright and privacy).

Katsh starts with the observation that society is in the midst of a paradigm shift in the way information is stored, analyzed, presented, and accessed. He argues that the shift to electronic media will transform economic and cultural structures as dramatically as Gutenberg's printing press did over 500 years ago. However, printed material instills qualities of integrity and permanence in the substance of the written work. This is especially true of legal documents because of the archival nature of the legal profession. Attorneys are therefore reluctant to recognize this shift, take note of its significance, or exploit it effectively. Unlike casebooks and bound statutes, electronically stored information can be easily manipulated or changed, thus disengaging the material of integrity and permanence. To put it another way, electronically stored information divests legal documents of qualities that heretofore made it "legal."

II. DISCUSSION

The first chapter, "Communicating in Cyberspace: Computer Networks," explains why businesses prefer to move and access information in electronic rather than printed form. Information stored on a computer can be manipulated, updated, and sent rapidly in a variety of formats.

The chapter also introduces the author's reliance on metaphor to illustrate legal and technological topics. Here, for instance, Katsh refers to Oliver Wendell Holmes' notion that "law is a seamless web" and extrapolates from the image of the web the idea of computer networks, such as the World Wide Web and E-mail, transforming relations among attorneys and between attorneys and their clients. These technologies make the practice of law easier and more efficient, while displacing existing methods of communication. This process creates a new, interlinked environment – a seamless web.

On the other hand, some metaphors and references will lose their meaning and be rendered obsolete. In order to illustrate this point, Katsh draws an interesting parallel between the growth of information technology today and the invention of automobiles over one hundred years ago. Cars were first sold as horseless carriages and were designed to look as if they were drawn by horses. Similarly, LEXIS and Westlaw use references to print culture, such as the phrase "electronic libraries," to organize and present their databases. These references to print culture will probably disappear just as references to horses disappeared in the automobile industry. Katsh point out that today cars are designed in light of factors (such as aerodynamics and fuel efficiency) that were unheard of when they were invented. The design of information software will also be designed in the context of an electronic display rather than a printed page, including consideration of hypertext links, modem speeds, etc.

In the second and third chapters, "Electronic Information Places," and "Law Libraries and Legal Information Places," Katsh uses the metaphor of "boundaries" to illustrate another effect of the shift away from the print medium. Katsh states first that the way in which information is stored and organized creates boundaries between· the user and the information. In a print culture, the boundaries may be determined by physical and geographical distance, whereas in an electronic culture boundaries are determined by access to the technology. Access may depend on one's economic capacity to own a computer, belong to an online service, or purchase an electronic version of a book. Access may also be determined by one's professional status. As Katsh discusses later in the book, certain services (such as LEXIS Counsel Connect) are only available to licensed attorneys. In addition, the format of the electronic information may not be compatible with the reader's computer, or its organization may be difficult to navigate. Katsh states that these types of boundaries are a result of "informational distance," a boundary that distances the user from the information despite geographical or physical proximity.

Katsh argues that attorneys derive authority over lay persons from the relative inaccessibility of legal resources. Legal research, for instance, is primarily conducted in a law library separate from other libraries on a university campus. Resources in the library, such ·as *Shepard's Citations* and *West Key Numbers*,[3] can only be understood or navigated with specialized knowledge. He hypothesizes that the

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3. Katsh explains that West Publishing Co. organizes case law by topics and assigns each topic a number. Shepard's Citations is a service that lists cases by their citation in a reporter and then lists every case which has referred to the cited case.

electronic availability of legal information will increase public access. However, Katsh fails to offer a concrete example of how these boundaries will disappear. For example, *Shepard's* and *West Key Numbers* do not become easier to use simply because one may access them through Westlaw or LEXIS. Although electronic information may be more current than that available in a printed format, on-line services were designed in a print culture, and the format for electronic information has not been changed substantively from the print format. Moreover, Westlaw or LEXIS may only be accessed by those with an account and a password (similarly, law libraries are rarely open to the public).

The fourth chapter, "Interacting in Cyberspace," continues to explore how the symbols of print culture preserve the authority of law practice and how information technology may change those symbols. This chapter also discusses how new ways of interacting with legal information change the substance of the law and the legal environment. Katsh argues that legal information will become less stable and less permanent. This will be due to a decreased emphasis on mass production and distribution, and an increased use of software that responds to and anticipates user actions. He also argues that legal information, like other types of information, is an economic good. Like any other commodity, information may be recycled, reused, improved, or become obsolete.

The next chapter, "Contracts in Cyberspace," is one of the more interesting and useful parts of *Digital World* because it explores the shift from print to electronic cultures specifically in the context of contract formation.[4] Since contracts have already been formed electronically, Katsh is able to examine concrete problems rather than offer speculation. He discusses, for instance, the use of Electronic Data Interchange (hereinafter EDI).

The creation of EDI makes it possible to replace paper contracts with legally binding electronic contracts. Despite the fact that EDI contracts may be printed out in hard copy and the system has not yet shifted to *purely* electronic contracts, Katsh argues using EDI displaces traditional assumptions of contract law. For example, printed contracts capture a "meeting of the minds" and maintain a discrete and tangible existence independent of the parties' changing thoughts. Electronic contracts, by contrast, may be updated continually. Instead of merely drafting a contract that attempts to incorporate all aspects of a business relationship at once, attorneys would be more involved in

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4. *See generally*, Richard Allan Horning, *Has HAL Signed a Contract? The Statute of Frauds in Cyberspace* in this issue.

managing changes in the business and legal relationships of their clients. Also, contracts and contract disputes would come to involve information rather than tangible products – a shift in the subject matter, not merely the form, of contracts.

Electronic media are more adept than permanent formats for analyzing and monitoring changes in information. Katsh speculates in *Digital World* that the law will change its emphasis to match these uses of information technology. However, paper is still the preferred medium for documents of legal significance, and the *only* available medium for some types of documents, such as wills.

The sixth chapter, "Beyond Words: Visualizing in Cyberspace," is not as informative as the discussion on electronic contracts, but it is still one of the more interesting chapters. This chapter discusses broad, symbolic issues. Katsh borrows liberally, although never explicitly, from the study of semiotics[5] to explore how the symbols of power and authority, which are taken for granted in the law, will change as information media change.

In addition, Katsh speculates that the use of images in the law will increase. Since computers reproduce and transmit graphics and symbols just as easily as text, the user chooses not only *what* but *how* to communicate. Katsh traces the shifting focus of computer technology from text to images. This new emphasis may be particularly relevant to the law, Katsh argues, since images are more persuasive than words. Katsh fails to discuss, however, that this is the very reason legal reasoning emphasizes dispassionate arguments and objectivity, instead of the use of images.[6]

Images – on television, in magazines, on computers – have changed the way society experiences legally significant events. Katsh discusses how the videotape of Rodney King's beating by Los Angeles police officers shows that an image can have effects that range far outside the courtroom. The videotape was seen by the jury and most of the American television viewing public, with tragic and explosive effects. The image of King's beating brought America close to issues of racial tension and police corruption. For much the same reason the United States Supreme Court has refused to allow cameras into the Court. The Court remains insulated from everyday experience and "Court TV," thereby maintaining its dignity.

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5. Semiotics is a discipline of the social sciences developed throughout the twentieth century that engages in a complex analysis of culture through symbols and signs.

6. One of the most interesting recent uses of graphics and images has been the use of computer generated images in the courtroom to aid in explaining concepts to, and ultimately persuading, the jury.

The seventh chapter, "Digital Lawyers: Working with Cyber-space" is another useful chapter in *Digital World*. Katsh discusses how early fears of technology stem from fears of replacement by automation. He argues that historically, technological changes, such as the printing press, have never resulted in a complete replacement of people's functions within society. The result is a cultural displacement which forces society to reorient affected institutions and professions. For illustration of this phenomenon, Katsh analyzes the experience of the railroad industry in the nineteenth century. When railroads became unprofitable to run, those railroads that were purely in the railroad business failed while those that expanded into the transportation business succeeded. Katsh then argues that attorneys who see themselves in the information business (digital lawyers) will not merely use electronic media but will use them more intelligently and effectively than attorneys who do not. The digital lawyers will be able to adapt to the twenty-first century.

Digital lawyers use electronic devices differently because they are not concerned with owning information as much as with exploiting links between groups of information. Attorneys who take note of trends in information technology will take advantage of the subsequent increase in information-related conflicts. Katsh argues that these lawyers will create new ways of managing information conflicts and will also consider the informational consequences of conflict in general. Attorneys must understand the value of information and information technologies since "adding value to information and using information to develop new relationships [will be] the central concern of the economic system."[7] This shift in economic structure affects attorneys' clients as well and will thereby also transform the attorney-client relationship.

Katsh also analyzes, in the seventh chapter, how the new legal environment will have fewer precedents from print culture. One example is LEXIS Counsel Connect, an electronic meeting place that pools together an array of online services that are useful to lawyers. LEXIS Counsel Connect eradicates some informational boundaries by allowing discussion between in-house counsel and private attorneys. It also creates new boundaries by permitting only licensed attorneys to access the services and discussion groups.

Katsh argues that the more the legal profession is invested in the increasingly outmoded paradigm of print, the less effectively it will be able to reorient itself in response to a new communications environ-

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7. KATSH, *supra* note 2, at 174-75.

ment. However, attorneys are resistant to the idea of being in the information business, rather than solely the legal business, or indeed in business at all. Katsh speculates that this resistance is due to attorneys' attitudes that the words "information" and "business" downplay the ethical codes of their profession, decrease the distance between lay persons and attorneys, and highlight the overlapping roles and expertise of attorneys and other professions.

The eighth chapter, "Hypertext: Constructing Cyberspace," focuses on how a particular technology allows the user to interact with text in a manner impossible in a print culture. With hypertext, a reader can read a book in a sequence purely of one's choosing by jumping instantly between different areas of a book, between different books, or between text and graphics. Katsh argues that the ability to "read" in a nonlinear fashion will encourage nonlinear thinking and therefore encourage new modes of legal analyses. This is one of the weaker sections of the book because Katsh fails to show, in a concrete manner, how this may affect the actual practice of law. Since hypertext is just beginning to be used, Katsh's hypothesis on nonlinear thinking has yet to be borne out.

The final chapter, "Lighting and Enlightening Cyberspace: Copyright and Privacy," is also weakened by Katsh's use of lyrical metaphor over logical analysis. However, he does argue somewhat successfully that as the economy becomes more information oriented, copyright and privacy concerns will increase. Legal doctrines that govern how information is stored and accessed will expand and new theories will evolve to address these concerns.

III. CRITIQUE

Digital World fails to meet the potential of the interesting topics it presents. Katsh offers thought-provoking speculation at the expense of concrete information and analysis. This is due in part to his ambitious goals: he explains what he views as a shift away from printed information, describes in detail technological methods of storing legal information and theorizes on the legal profession's ambivalence toward change and adopting new technology. Each topic could be the subject of an entire book. In addition, these dynamics are evolving so rapidly that it might be too early for a book that seeks to guide the reader through a transformation in its early stages. Katsh can only offer sparse examples of how technological change will lose its references to print culture when this has yet to happen.

In terms of scholarship, Katsh never states his methodology for exploring these dynamics. He draws liberally from anthropological

and sociological theory but avoids direct references, which might alert the reader that he is going outside legal discourse to examine and critique the phenomena he describes. This is unfortunate. By not stating his methodology, and the fact that his book is as much a criticism as it is an exploration of the nature of change, Katsh undercuts the persuasiveness and power of his thesis. An example is his assertion that a change in the *context* of information is as important as the *content* of information because context structures the relationship of the reader to the text. Although this is the touchstone for several interesting pages on symbols and context, Katsh's argument would be more persuasive if he argued first that the practice of law is as much a cultural institution as it is a profession and, therefore, benefits from analysis under social science critical theory.

One of Katsh's most optimistic assumptions in *Digital World* is that an electronic culture is more egalitarian than a print one. However, the rapid growth of software and hardware makes computers only a few years old obsolete. Computer systems are expensive and require advanced skills to navigate. LEXIS and Westlaw, for instance, invest high amounts of money to train law students and attorneys how to use their services and provide customer service over the telephone. Technology is a privileged form of storing information that may simply substitute a new hierarchy for the old one.

IV. CONCLUSION

Although tempting, it is difficult to offer perspectives on a historical change that is not yet complete. Katsh tantalizes the reader with possibilities that are mere speculations at this time. However, even if he cannot completely outline the paradigm shift he describes, he frames issues and asks questions that will need to be answered. *Digital World* is a snapshot of the legal profession as it unwillingly finds itself caught in fast pace of technological change. Katsh at times overestimates the impact of that change, but he also offers interesting insights into the practice and reproduction of law.