

Welcome to *I/S*

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On behalf of the faculty editors, professional staff, national editorial board, and student editors, I am honored to welcome you to this inaugural issue of *I/S*. We are aware of very few inter-university academic journals of any sort, and none in this field. Such an enterprise, however, is an altogether logical initiative for a law school – The Ohio State University’s Moritz College of Law – long committed to the pursuit of interdisciplinarity, and for a public policy school – Carnegie Mellon University’s H. J. Heinz III School of Public Policy and Management – consistently ranked as the nation’s foremost public policy school for its offerings in information technology. Those of us engaged in organizing *I/S* regard ourselves as blessed with an uncommon privilege to help in marshaling the intellectual resources of two outstanding centers of learning to produce what all hope will be a significant new voice in analyzing the social impacts of new information technologies.

I/S welcomes the broadest spectrum of researchers to help shed light on issues at the critical juncture of law, policy, and information technology. Our inaugural “paper symposium” on electronic rulemaking demonstrates why an interdisciplinary approach in this area is imperative. The symposium is in reaction to a real-world development: Federal agencies, commanded by law to solicit public input in the development of administrative policies, have turned to the Internet as a significant new medium for engaging the public. What this will mean for the future of administrative law, for the management of government policy making, and for the interaction with government of both individual citizens and organized interests are all important areas of inquiry. Whether current efforts are well-calculated to maximize the potential value of the Internet for enriching our democratic life, and, if not, what else could be done, are critical questions. Although rulemaking is a quintessentially legal process, it is manifest that legal scholars cannot usefully address these pressing subjects solely through conceptual analysis rooted in traditional legal materials.

Cary Coglianese, a public policy scholar (with law degree), describes in his essay a range of issues that policy makers ought consider in deciding whether an investment in electronic rulemaking is worthwhile.¹ If policy makers follow the Coglianese agenda for

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¹ Cary Coglianese, *The Internet and Public Participation in Rulemaking*, 1 *I/S* 33 (2005).

evaluating the relevant variables, they will have to consult cognitive psychologists, political scientists, and software designers if they are to arrive at sound judgments.

Of course, researchers (and citizens generally) may want to know just how much difference electronic rulemaking will make with regard to agency policy making. Will it involve different people, at different levels of influence, and with different ranges of interests than have been involved in rulemaking of the pre-digital age? The inherent difficulty of this question is exacerbated by the relative paucity of empirical scholarship giving us a clear baseline understanding of the realities of federal rulemaking processes prior to the Internet.² The contribution by Steven Balla, a political scientist, reminds us that an assessment of public input into regulatory policy making requires attention to a variety of public-agency interactions that go beyond the bounds of the Administrative Procedure Act.³ An unintended consequence of the proliferation of electronic docket management in administrative policy making may be the light shed not only on the legally prescribed forms of agency-public interaction, but on the entire range of contacts that influence the making of policy. The increasing transparency of rule making process enabled by new applications may be as enduring a contribution to governance as the enhanced convenience of public participation.

Beth Noveck, who is both a legal academic and a software designer, argues in her article that the federal government has yet to undertake electronic rulemaking initiatives well calculated to take advantage of the potential for civic dialogue that the Internet can unleash.⁴ Taking advantage of the Web, in her view, requires attention preeminently to models of offline deliberation that are successful in realizing norms of deliberative democracy and the potential to replicate those models through good design.

What happens to agencies once new communications technologies are in place, however, implicates more than just law and politics. Should hundreds of thousands of Americans become not only enabled, but engaged in the process of participating in agency policy making, the deluge in communications could potentially overwhelm agency processing capacities. The seriousness of this potential problem depends in no small part on the availability of new tools to manage the collation and processing of large volumes of text. The article by engineers Gloria Lau, Kincho Law, and Gio Wiederhold illuminates

² Stuart Shulman, *The Internet Might Still (But Probably Won't) Change Everything*, 1 I/S 111 (2005).

³ Stephen J. Balla, *Between Commenting and Negotiation: The Contours of Public Participation in Agency Rulemaking*, 1 I/S 59 (2005).

⁴ Beth Simone Noveck, *The Future of Citizen Participation in the Electronic State*, 1 I/S 1 (2005).

the prospects for automated tools to help agencies cope with the potential influx of large volumes of public comment.⁵ Their analysis should be of enormous interest to political scientists, as well, because they show how automated tools are likely to make agency workflow far more transparent even to agency managers themselves, with a variety of potentially salient impacts on how agencies of the future engage in administrative policy making.

Law professor Stephen Johnson wrote an influential article in 1998, the title of which included the words: “The Internet Changes Everything.”⁶ Reporting on three years of NSF-funded workshops and focus groups, political scientist Stuart Shulman responds, at this point, “probably not.”⁷ His analysis of stakeholder reactions to a range of questions posed by technological change leads him to suspect that near-term developments are most likely simply to “digitize established paper-based processes.”⁸ This is not a settled conclusion, according to Professor Shulman. Nor does it mitigate the improvements likely to be realized just from digitizing established processes. His analysis does, however, highlight the ways in which political, social and economic factors will shape the evolution of a process that lawyers think of primarily as “legal.”

Provocative and thoughtful as they are, even these five wide-ranging pieces do not provide a definitive picture of the future of electronic rulemaking. They do, however, consistently imply and sometimes make explicit an agenda for experimentation and research that can and should engage lawyers, political scientists, cognitive psychologists, management experts, software designers, communications scholars, and others. What these pieces demonstrate by way of method is the quality of conversation that can be obtained if, but only if, insightful observers from all these perspectives combine forces to shed light on new and important phenomena.

What is true about understanding the future of electronic rulemaking is true also, we believe, with regard to the future of cybersecurity, privacy, electronic commerce, telecommunications regulation, the impacts of information technology on economic development, on-line community building, and a host of other subjects

⁵ Gloria T. Lau, Kincho H. Law, and Gio Wiederhold, *A Relatedness Analysis Tool for Comparing Drafted Regulations and the Associated Public Comments*, 1 I/S 95 (2005).

⁶ Stephen Johnson, *The Internet Changes Everything: Revolutionizing Public Participation and Access to Government Information through the Internet*, 50 ADMIN. L. REV. 277 (1998).

⁷ Shulman, *supra* note 2.

⁸ *Id.* at 137.

that loom large as we try to comprehend our ICT⁹-infused future. We are grateful to our authors for helping to launch this polyglot discussion, and hope that others will be willing to join us in shedding new light on the profound issues within the *I/S* domain.

On a final note, this venture would not have been possible without the support of the deans and faculties of both the Moritz College of Law and the Heinz School, as well as many of the two schools' professional staffs, who have lent their assistance to every aspect of our endeavors. (Among these, we are especially grateful to Heinz School graphic designer Gary Franko, who developed our cover.) We likewise benefited enormously from the cooperation and insights of those associated with one of our sister journals, *The Ohio State Journal of Criminal Law*, and most especially, its editor-in-chief, symposium editor, and faculty advisers Joshua Dressler and Douglas Berman. They saved us from reinventing many a wheel while launching this publication. On behalf of all the *I/S* editors and staff, I convey our deepest thanks.

⁹ United States researchers most commonly refer to new information technologies as "IT," while non-U.S. researchers typically use the more precise "ICT" to refer to "information and communications technologies." Given our global ambitions, it will be the *I/S* convention to use the latter acronym.