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A Foundational Proposal for Making the Durham Statement Real

Wayne V. Miller

Duke Law School, wmillier@law.duke.edu

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A Foundational Proposal for Making the Durham Statement Real

by [Wayne Miller](#) - June 10, 2010

We therefore urge every U.S. law school to commit to ending print publication of its journals and to making definitive versions of journals and other scholarship produced at the school immediately available upon publication in stable, open, digital formats, rather than in print. [[Durham Statement on Open Access to Legal Scholarship](#)]

As a participant in the upcoming [AALL conference session on the Durham statement](#), I have had occasion to consider – with my fellow panelists – the full range of issues that accompany its simple, but elegantly outrageous ambition. The following is my attempt to synthesize the issues into a coherent, though still quite preliminary solution. At the heart is my conviction that the problems of digital publishing are best solved by a stable and open organization of and by the stakeholders. The discussion participants have been Richard A. Danner, Margaret K. Maes, Thomas R. Bruce, and Margaret A. Leary, but this expression of a solution is my own.

1. **Build a foundation.** Found an organization whose mission is to guarantee the ongoing viability and availability of all publications that adhere to the Durham Statement's call to action, hereafter called the Durham Statement Foundation. Reasonable fees will be collected to assure its continuation. It is hoped that the organization can be hosted at a member law school.
2. **Promise perpetual access.** Any member of the foundation signs an agreement that all journal archives created under the auspices of the foundation will be available to all foundation members separately and in perpetuity. Thus, if I am a member of the foundation in 2015, I have access to all archives available up to the first day of the next year, with no expiration.
3. **Make available on the commons.** All journal content must be publicly accessible through the Internet or other means under a Creative Commons license - if content is for some reason not available through the publishing law school or foundation, then it can be shared by any foundation member. The archival version can be more closely protected as long as the foundation exists, in order to encourage membership. If the foundation becomes insolvent or unable to fulfill its obligations, it must release the full archives into the public domain.
4. **Commit to format standards.** The journal archives will adhere to a mutually agreed-upon format. Elements of that format should include:
 - a. One archival format of the documents (I suggest Office Open XML for simplicity's sake)
 - b. One standard presentation format of the documents (I suggest PDF)
 - c. Alternative optional formats, as agreed upon by the foundation (xhtml, OpenDocument XML, mobile formats, etc.)
 - d. XML manifest of included documents, with digital signatures that prove their authenticity and accuracy (manifest schema to be determined; digital signature technology to be determined)

- e. Each issue of each journal should be gathered in an archive file of an agreed-upon format, such as ZIP or GZIP
5. **Define the characteristics of digital scholarship.** Digital-only questions that need addressing right away by the foundation and its members:
- a. What sort of documents should be included in this archive, as the definition of journal may change with the changing definition of publication?
 - b. Should journals continue to be published in issues, or should individual or rolling publications be captured?
 - c. How should the documents be citable: by page, paragraph number, line number, word count?
 - d. Should the PDFs continue to reflect print paper size and conventions?
 - e. How should notes be represented?
 - f. If multimedia becomes part of the publication process, should these elements be part of the archive? (I recommend linking out to other repositories or archives for temporal multimedia such as videos, recordings, simulations, in order to avoid the storage and serving requirements that could complicate the project many times over; this means that the journal editorial guidance must assume that these additional elements may not be available to the reader.)
 - g. What should be the conventions both for linking out to other documents in the archive and on the Internet, and for accepting commentary, new cross-references and other forms of added information or knowledge?
6. **Provide the tools for digital publication.** The act of publication will be replaced with the act of submitting the journal issue to the foundation. The foundation will provide tools to make the submission a non-technical process (automatically creating the manifests and digital signatures, for instance), and will provide tools to share the information about publication widely (RSS feeds, and so on). Ideally, the foundation would make recommendations for a smooth all-digital workflow from submission to editing to publishing.
7. **Provide stable linking.** The foundation will provide permanent links for all journal articles submitted to it according to an agreed-upon format (as in, for example, <http://durhamstatementfoundation.org/bluebookcitationminuspunctuation/>). The link will either point to a representation of the journal on the foundation's site, or, if the school prefers, to the publishing school's site. The foundation must be prepared to participate in successor space(s) to the World Wide Web.
8. **Archive for multiple futures.** The foundation will designate print or other non-electronic repositories for the archive's content and will fund the supply of copies to the repositories. In addition, the foundation will use IT best practices to assure the safe continuity of its digital archive.