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Adjudicating Cyberspace: Timothy C. Leixner '63 and the Virtual Magistrate Project

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Memo to: The guy at the other end of the Internet connection.
You got a problem? Yeah, you. I'm talkin' to you.
I oughta take this modem and ...
Hold it! Human nature being what it is, disputes inevitably arise - even in the fast lanes of the information highway. When that happens, it's time to call in the Virtual Magistrate.
That's the vision of Timothy C. Leixner '63 and a team of Internet experts. They've created a place on the World Wide Web where on-line disputes can be resolved quickly, decisively and fairly - and all through the magic of e-mail.

"Right now, these kinds of cases are handled through the courts," says Leixner, who practiced with the Buffalo law firm Jueckle, Fleischmann and Mugel LLP for more than 20 years before moving to Florida in 1987. He is now a partner in the 550-lawyer firm Holland & Knight LLP.

"But that's slow - a lot of things are put on hold waiting for a decision. It costs a lot of money. Also, judges are generally not very familiar with the Net, and you get contradictory decisions. What we're hoping to do is have accepted the concept of a special body that will deal with these Net issues on a global basis, and the decisions will be uniform and accepted on a global basis as precedent."

So, for example, a question of copyright infringement may be brought to the Virtual Magistrate - a real person behind the keyboard, trained in arbitration techniques and knowledgeable about the law. A newsgroup forum would be set up, everyone involved would argue his side in this public arena, and the Magistrate would issue a decision. Participants agree in advance to abide by the decision, though it does not have the force of law.

The Virtual Magistrate Project is the brainchild of Leixner and his colleagues at the National Center for Automated Information Research. Leixner is board chairman for NCAIR, an educational foundation based in New York City that makes grants and conducts programs on the use of computer technology by lawyers and accountants. NCAIR is funding the pilot project.

The project is being tested with real cases, and will be evaluated this year to decide whether to expand the service and make it permanent.

The problems go beyond copyright infringement and libel accusations in the notoriously tetchy exchange of verbiage across the vast computer network. Leixner cites the problem of jurisdiction, as in the case of gamblers who connect, via computer and satellite hook-up, to casinos on ships in Caribbean waters. The Michigan attorney general, he said, has argued that he has jurisdiction to prosecute illegal gambling conducted in this way, but who's to say?

The process, Leixner says, is more like arbitration than a court of law. Indeed, the American Arbitration Association selects the Virtual Magistrates jointly with the Cyberspace Law Institute - an entity that exists only on the Internet, a "think tank without the tank," as its home page points out - and provides training in arbitration techniques. "We don't have any power at this point," he says. "No governmental body has given us a jurisdiction as a matter of right. The only way we can be used is if the parties agree to use us."

Talk about swift justice - the project's goal is to decide most cases within 72 hours.

Complaints will be accepted either through e-mail or through a form on the Virtual Magistrate's World Wide Web site. Internet users, system operators and others affected by network messages, postings and files may be the source of complaints. Initially, the Virtual Magistrate will decide whether it would be reasonable for the system operator to delete or otherwise restrict access to a challenged message, posting or file.

Some other examples of areas that might cause objections: misappropriation...
tion of trade secrets, fraud, deceptive trade practices, inappropriate (obscene, lewd or otherwise in violation of system rules) material, invasion of privacy and other wrongful content.

Said David Johnson, co-director of the Cyberspace Law Institute: "The Virtual Magistrate Project is not a solution to all network problems. Some matters will inevitably end up in traditional courts. But if the Virtual Magistrate Project can contribute to the swift, inexpensive and fair resolution of some disputes, then it will be a success."

And George Friedman, senior vice president of the American Arbitration Association, added: "Given the increasing inaccessibility of the court system and the explosive growth of online technology, it is quite appropriate that an effort would be made to develop a means of resolving disputes simply and quickly online. The American Arbitration Association is delighted to be a founding partner of the Virtual Magistrate Project, which will undoubtedly pave new ground in advancing alternative dispute resolution."

The Virtual Magistrate Project can be accessed at the Villanova Center for Information Law and Policy Web page, at http://vmag.law.vill.edu.