MEDIA LAW NOTES

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AEJMC Law & Policy Division

PLEASE NOTE: The Law & Policy Division will release its final newsletter of the academic year in late July, and it will include the conference schedule and related information.

Head Notes

By Nina Brown
Syracuse University

The past 15 months have been exceptionally trying. Most of us had to reinvent how we teach and engage with students in an online space. Many of us were disconnected from our friends, families, and colleagues at a time when we most needed them. Some of us fell ill. Some of us missed out on celebrating important milestones, and some of us suffered the loss of loved ones. It has been challenging.

The Law and Policy Division lost its own Michael Hoefges, who passed away in March after a long battle with cancer. To honor Michael and his contributions to the Division, a fund has been established in his name to support students who will present their work in the Law and Policy division at AEJMC-sponsored conferences. Contributions to the Hoefges Student Fund can be made at this link: **https://aejmc2.wufoo.com/forms/aejmc-contributions/?utm_source=AEJMC+Giving+Campaign+Nov+2015&utm_campaign=Membership+Email&utm_medium=email.**

Despite all of the challenges we've faced, there have been some positive moments worth reflecting on. From Zoom happy hours to FaceTime game nights and everything in between, people all over the world found ways to connect in a time of global crisis, and many of those connections are remaining as life slides closer to the "new normal." The same is true for our research and teaching.

Reinventing our approach to teaching to fit an online or hybrid model gave us new ideas of how to engage students when we're back together in one physical classroom. It also helped us learn how best to present material and work with students who will remain in online classrooms. Law and Policy Division members also took advantage of technology to bring one another into their classrooms.

Chris Terry invited Anthony Elonis to join his online class to talk about his case, and Chris graciously allowed some Law and Policy Division members to crash that class. Katy Culver curated a series of Media Law Chat videos*, where she interviewed professors about significant media law cases. The Women in the Law Division (WiLD) met several times on Zoom over the past year, which led to research collaborations, guest lectures, and shared teaching resources (not to mention a good time!).

The Southeast Colloquium was a great success, and a huge thank you goes once again to Mike Martinez for his efforts in chairing a fantastic law and policy program.

There are so many more examples of how our division overcame the challenges of teaching and researching during a pandemic, but I'll just mention one more: We acted on the feedback our members offered during the 2020 conference, and we hosted a bonus PF&R session this spring. Amanda Reid, our PF&R chair, put together the terrific panel "Exploring the Ethical and Legal Implications of Facial Recognition Technology." Panelists included Jasmine McNealy, University of Florida; Kearston Wesner, Quinnipiac University; Hanna Bloch-Wehba, Texas A&M University; Xerxes Minocher, University of Wisconsin-Madison; and Evan Ringel, University of North Carolina-Chapel Hill.

Speaking of panels, we have an excellent lineup for the August conference! Thanks to Research Chair Jared Schroeder for managing the competition and planning our thought-provoking paper sessions. Vice Head and Programming Chair Caitlin Carlson has planned an incredible slate of panels, including an "off-site" that you won't want to miss. The WiLD will meet again during the conference, too.

A warm congratulations goes to Genevieve Lakier, assistant professor of law at the University of Chicago, who is the recipient of the 2021 Harry W. Stonecipher Award for Distinguished Research in Media Law and Policy. You can read more about Lakier's winning article, "The First Amendment's Real Lochner Problem," later in this issue.

The full conference schedule will be available in the newsletter's next issue, which will be distributed toward the end of July. I look forward to meeting with you at the conference in August!

Brown is head of the Law and Policy Division.

**Webmistress note:* Katy's playlist can be found on YouTube:
https://www.youtube.com/playlist?list=PLzy64pFlXBi2A4P06l2kfqkMhc2e2WA55

Bridging the divide: A need to reevaluate the marketplace of ideas

By Harrison Rosenthal
University of Kansas

Is it time to prioritize a global, collectivist standard of human dignity and equal protection when contemplating the direction of American free-speech jurisprudential philosophy?

An ideological chasm is emerging between new First Amendment theorists, including graduate students, and their scholarly forebearers on the philosophical justifications for hate speech protection. Excellent reporting and opinion pieces in the *New York Times*, in particular, have brought this divide out of the academy and into the public consciousness.

The 'old guard,' acculturated in the 1977 Skokie era, generally believes that Constitutional principles cannot be protected absent a categorical defense of individual personal liberty, including the expression of extreme speech. This quasi-absolutist approach to speech protection, famously embraced by professors and ACLU attorneys David Goldberger and Nadine Strossen, is quickly losing traction among new scholars and advocates who no longer accept the marketplace premise on which the theory is based.

Traditional First Amendment philosophy holds that free-speech libertarianism is the *sine qua non* of democratic self-governance. Near-absolute freedom of speech, sometimes called Meiklejohnian absolutism, ensures a full ideological marketplace by encouraging individual introspection and self-expression. Under this theory, protecting speech-market capitalism—even if it means allowing speakers to introduce hateful content destructive to individual self-actualization—leads to better democratic governance because the marketplace, not the government, sets the agenda for public discourse.

The 'new guard,' on the other hand, is acculturated in the social-media era where disinformation has eclipsed censorship as the predominant threat to democratic self-governance. Its members, like those of the old guard, reject the government's attempts to regulate free speech. Self-interested political

actors will invariably use hate-speech legislation to suppress unpopular opinions. But unlike their libertarian progenitors, the new generation questions, or flatly repudiates, the marketplace's ability to regulate extreme speech. In other words, they believe that the marketplace of ideas is broken.

Digital misinformation, under the new view, creates such a market failure that the marketplace analogy no longer applies. The marketplace approach is problematic because (1) an ideal Platonic Form does not exist; (2) access and participation are inequitable and financially determinative; and (3) a deluge of digital disinformation, combined with a dearth of new media editors, make truth-discernment difficult for the public. One-fourth of Americans still believe Donald Trump is the "true president," according to a recent Reuters/Ipsos poll.

Are these new theorists abandoning traditional free-speech principles in their fight for progressive causes, as Professor Goldberger has lamented? Just the opposite. They are taking an integrated and comprehensive approach to Constitutional speech protection.

The new guard, which includes advocates like Carrie Goldberg and scholars like Mary Anne Franks, is balancing the equities of First Amendment libertarianism against Fourteenth Amendment equal protection—or what the international community calls human dignity. For sociohistorical reasons rooted in armed conflict, Americans tend to embrace individualism, while Europeans tend to embrace collectivism.

These new scholars, by reframing the extreme-speech problem through John Dewey's individualism-collectivism taxonomy, are rebalancing free-speech objectives through holistic and international lenses. This reconceptualization is critical given our increasingly globalized and digitized speech marketplace.

Graduate students can navigate this ideological divide in a twofold manner.

First, they can begin to question the minor premise of the marketplace syllogism. Adam Smith's invisible hand—and the American laissez-faire model of speech regulation—may no longer apply in the digital age.

Second, they can remind the naysayers that scholars are not bound by rules of legal precedent. Unlike the judiciary, the academy is a space for socio-normative arguments rooted in philosophy. Our scholarly objective, to paraphrase Dewey, involves analyzing critically the premises that are uncritically assumed in practice.

Why shouldn't this include the marketplace of ideas?

Southeast Colloquium goes virtual for the second year

By Michael T. Martinez

University of Tennessee

For the second year in a row, because the coronavirus was still rampant in the United States, the Southeast Colloquium was held virtually. Kenn Gaither, chair of this year's event, which was hosted by Elon University, said, "Although we could potentially host an in-person conference, we were concerned about travel in general and shrinking travel budgets, particularly for graduate students."

That decision formed a silver lining in what could have been a dark cloud. Virtual attendance for the Law and Policy division was significantly higher than in the past, and some attendees from the west coast, who have not been able to participate previously because of distance and budgets, were able to join the conference.

Nikole Hannah-Jones, the *New York Times Magazine* reporter who won a Pulitzer Prize for commentary for her essay "The 1619 Project," tracing the central role black Americans played in the nation, was the keynote speaker. In addition to addressing how the project came about and the impact it has had, she spoke about the importance of mentorship, the central theme of the colloquium.

The Law and Policy division was well represented with two PF&R panels, two research panels, and one research-in-progress roundtable. On average, there were 15 people in each of the Zoom sessions.

Israel Balderas, Palm Beach Atlantic University, moderated a panel titled "Section 230: The Twenty-Six Words That Turned Online Speech Into Techlash." Discussing the topic were Jeff Kosseff, United States Naval Academy; Carrie Goldberg, a civil rights attorney; Cathy Gellis, an Internet law attorney; and Christopher Terry, University of Minnesota.

For the third year, Terry led the "Thunderdome" panel, this time focusing on *Prometheus v. FCC*. Joining him in the discussion were Caitlin Carlson, Seattle University; Laurie Thomas Lee, University of Nebraska-Lincoln; and Genelle Belmas, University of Kansas.

There were 16 full papers submitted: seven faculty and nine students. Eight full papers were accepted for a rate of 50 percent. There were seven research-in-progress abstracts submitted: four faculty and three students. Four R-I-P's were accepted for a rate of 57 percent.

W. Wat Hopkins, Virginia Tech, was awarded the top faculty paper for “Times v. Sullivan Revisited: Interment or Resurrection,” and Erin McLoughlin, University of Florida, was awarded the top student paper, for “Some Lessons from United States v. Bolton about United States v. Snepp in the Internet Era.”

The past two Southeast Colloquiums have been virtual, and some attendees like the virtual format. They said it is easier to attend from the comfort of one’s home. Others, however, miss the in-person networking and opportunity to visit new places (and the opportunity to seek out famous BBQ joints!). Some have raised the question of whether future conferences will be a blend of virtual and in-person formats.

Chair Matt Haught, and the University of Memphis, will return in 2022 to host the Southeast Colloquium, this time in person. The dates are yet to be determined.

Genevieve Lakier Receives 2021 Harry W. Stonecipher Award

The recipient of the 2021 Harry W. Stonecipher Award for Distinguished Research in Media Law and Policy is Genevieve Lakier, an assistant professor of law at the University of Chicago.

Her winning article, "The First Amendment's Real Lochner Problem," was published in July 2020 in the *University of Chicago Law Review*. It explores a familiar criticism of the Supreme Court's First Amendment jurisprudence: the privileging of commercial speech at the expense of other non-commercial priorities of free expression.

While an old criticism, she takes a different approach. The problem, she writes, "will only be solved by reconceiving freedom of speech as a positive rather than a negative right and one that guarantees, to listeners as well as speakers, the right to participate in a public sphere that is diverse along both racial and class lines."

This reinterpretation, she concedes, will create difficult questions in light of longstanding case law. However, she writes, "there is ultimately no other way to vindicate the democratic values the First Amendment is intended to protect."

The award judges were inspired by the speech-enhancing potential of Lakier's approach, especially as it foregrounds the interests of less powerful speakers. They also praised her mastery of a large body of Supreme Court jurisprudence.

This is the second time Lakier has received the award, which is given by the Law and Policy Division and honors the legacy of Harry W. Stonecipher, who died in 2004. He was an acclaimed and influential First Amendment scholar who nurtured a number of distinguished media law students during his 15-year career at Southern Illinois University, Carbondale, beginning in 1969.

Annotated Bibliography

RonNell Andersen Jones and Sonja R. West, "The U.S. Supreme Court's Characterizations of the Press: An Empirical Study" (2021)

By Skylar Nicholson
University of Georgia

How the U.S. Supreme Court speaks of the press has served as a crucial lens to understand its attitude on free expression and press values. Professors RonNell Andersen Jones and Sonja West note the lack of research on the Court's characterizations of the press and how they have changed over time. Through their empirical study, they evaluated whether the Court can be counted on to support strong press freedom values, in spite of the varying individual political ideologies of the justices.

Jones is the Lee E. Teitelbaum Chair and Professor of Law at the Quinney College of Law at the University of Utah, and West is the Otis Brumby Distinguished Professor in First Amendment Law at the University of Georgia.

Their study is the first comprehensive examination of the Court's depictions of the press. Jones and West recorded every reference to the press in the Court's opinions since 1784. Their method included hand coding the references for the presence of common frames and whether each frame was conveyed with a positive, negative, or neutral tone. In total, there were eight frames, three tonal variations, 114 justices, and more than 8,000 characterizations of the press over the course of 235 years.

The results revealed troubling trends with major implications for any discussion of contemporary press freedom. The data show that the Court is referencing the press far less frequently than it did a half century ago. This includes a "notable decline in even the Court's most basic recognitions of the work performed by journalists as communicators of information to the American public," according to the study.

In addition, Jones and West found that in the Court's modern era the justices acknowledge the mere existence of press freedom significantly less often than in prior eras. And in all contexts in the modern era the Court is less likely to talk about the press at all.

These findings paint a stark portrait of deterioration in both the quantity and quality of the Court's characterizations of the press across a variety of measures. In short, the justices are now less likely to talk about the press, and when they do so it is more often in a negative

Journalists need more newsgathering protections under the press clause

By Kriste Patrow
University of North Carolina-Chapel Hill

Newsgathering has become an increasingly dangerous enterprise in the last year.

At the end of 2020, the Committee to Protect Journalists (CPJ) published an article discussing what the organization called an "unprecedented series of attacks" on the media. A more recent post by the U.S. Press Freedom Tracker has updated numbers chronicling how journalists were treated while covering protests between May 26, 2020, and May 25, 2021: 153 journalists were arrested or detained by police, and 580 journalists were physically attacked. CPJ attributes the growth in attacks to a polarized political climate, militarized police force, and vitriol toward the media.

The norms that protect journalists are under duress, too, and media law scholars RonNell Andersen Jones and Sonja West argue in their article "The Fragility of the Free American Press" that they have been under duress longer than we like to think. Judges across the country have been taking, for years, a dimmer view of the press. And in a new article, "The U.S. Supreme Court's Characterizations of the Press: An Empirical Study," soon to be published, Jones and West document a stark decline in the Supreme Court's esteem for the press.

The newsgathering protections that journalists enjoy, such as those under state shield laws, are interpreted by courts when there is a dispute.

As a practical matter, if judges do not think highly of the press, that could significantly hamper newsgathering in the coming years.

Perhaps more than ever before, it is imperative for the courts to recognize and respect protections for journalism that foster self-governance. What would be helpful would be to identify the many important civic roles that journalism plays in American society and to take affirmative steps to advance those roles. The good news is that the Supreme Court has already done so throughout its jurisprudential history, in dicta.

For example, the Court has extoled the press's role as civic educator in *Richmond Newspapers v. Virginia,* as a facilitator of informed public debate in *First National Bank of Boston v. Bellotti,* as a representative of the public in *Houchins v. KQED, Inc.,* as a contributor to voter efficacy in *Cox Broadcasting Corp. v. Cohn*, and as a government watchdog in Leathers v. Medlock.

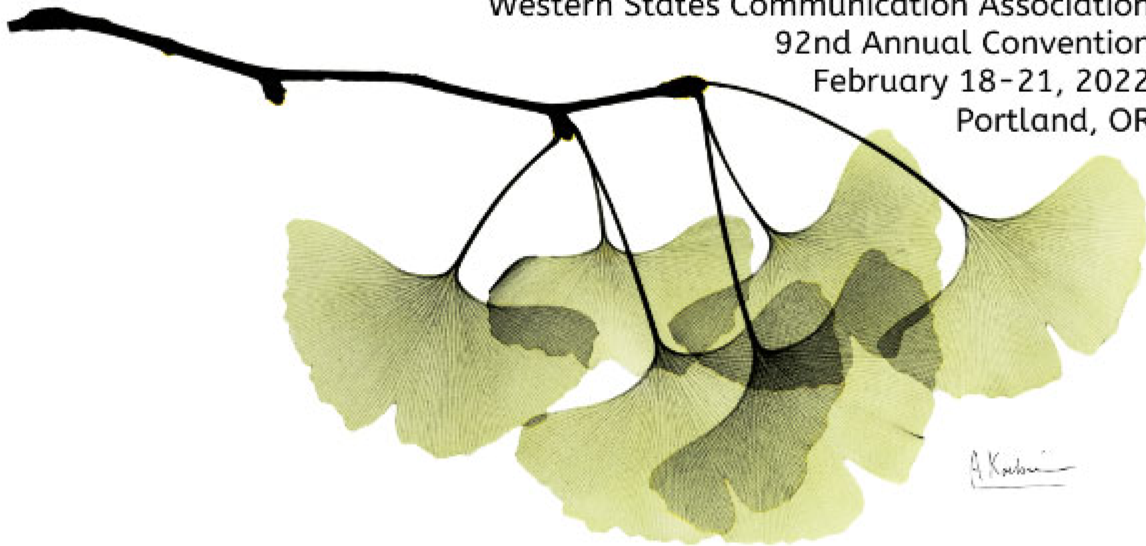
To fulfill these roles, the press needs more Constitutional protections, and specifically journalists need protections for newsgathering under the press clause. We can no longer rely on judicial goodwill and our American traditions. This should be of concern to us all. As Justice Murphy observed in his concurring opinion in *Craig v. Harney:* "A free press lies at the heart of our democracy and its preservation is essential to the survival of liberty."

Call for papers: Freedom of expression and political communication

The Freedom of Expression and Political Communication (FoE-PC) Interest Group of the Western States Communication Association invites competitive paper submissions and program proposals for the 2022 Annual Convention. The theme for this year is "Cultivate."

The FoE-PC invites paper and panel submissions that reflect the goals of the interest group by engaging issues of free expression, First Amendment studies, and communication in the political milieu, all while engaging the conference theme.

The deadline is September 1, 2021, and more information about the conference and the call for papers can be found at https://www.westcomm.org.



Pandemic lockdowns, workarounds, and copyright

By Amanda Reid
University of North Carolina-Chapel Hill

In virtual spaces, when are copyrighted works (e.g., music or background art) performed or displayed "publicly"?[1] The pandemic has forced all kinds of essential activities online—activities like teaching, religious fellowship, and healthcare services. To cope in a pandemic environment, our heavy reliance on technology has enabled pro-social activities to continue. To be sure, these remote services existed before the pandemic, but physical distancing measures accelerated their adoption. But simply transitioning heretofore live activities to online activities is not without costs. An unexpected and often hidden cost is copyright. This issue is illustrated through three case studies: online classes, online religious services, and online health/wellness services.

The Copyright Act grants a copyright holder the exclusive right "to perform the copyrighted work publicly"[2] and "to display the copyrighted work publicly."[3] This means a rightsholder can exclude or demand a license when a work is performed or displayed "publicly."[4] The statute defines "publicly" in two ways: (1) performances at public places[5], or (2) performances transmitted to the public.[6] For example, singing a copyrighted song in the shower is a performance,[7] but as a private one it is not infringing.[8] The Copyright Act also exempts certain public performances and displays, which are discussed below. These exemptions reflect Congress's policy judgment that restricting such unlicensed performances would not be in the public's interest.[9]

Case study 1: Remote education via Microsoft Teams

For remote teaching during the pandemic, the existing statutory exemptions offer inadequate protection. First, § 110(1) applies to "face-to-face teaching activities" in "a classroom or similar place devoted to instruction."[10] It is unclear if a videoconferencing platform would qualify as a "similar place devoted to instruction." Second, § 110(2) is a tightly circumscribed exception for transmissions that are a "regular part" of "systematic mediated instructional activities."[11]

The TEACH Act[12], as § 110(2) is commonly known, permits certain uses of copyrighted works so long as they are "an integral part of a class session" and are "directly related to and of material assistance to the teaching content of the transmission."[13] Scholars confirm that Congress "intended to place elaborate boundaries on the scope of the [§110(2)] distance education exemption."[14] Note, for example, that §110(2) does not exempt other exclusive rights, like derivative ones.[15] Moreover, materials made solely for online instruction are ineligible for this exemption, which can restrict instructional materials available to teachers who have fewer resources. Thus, teachers sharing educational content with their students via digital networks

may not always receive protection from the § 110(2) exemption.[16]

Case study 2: Virtual religious services via FacebookLive

Section 110(3) carves out an exemption for performances of musical works "at a place of worship or other religious assembly."[17] The legislative history suggests that "other" places could be where "services are conducted before a religious gathering," including auditoriums and outdoor theaters.[18] As the performance must occur "at a place of worship or other religious assembly," the House Report emphasized that "the exemption would not extend to religious broadcasts or other transmissions to the public at large, even where the transmissions were sent from the place of worship."[19]

In a socially distanced environment, some places of worship have offered services exclusively online.[20] Pre-pandemic, the industry custom was to treat livestreaming of services as a separate performance, which occurs in addition to the performance at the place of worship. Companies like Church Copyright License offer licenses to livestream worship service music.[21] It is unclear whether an exclusively online "religious assembly" that performs musical works "in the course of services" could qualify for the § 110(3) exemption.

Case study 3: Telehealth music therapy via Zoom

Telehealth delivery of music therapy has been used to bring comfort and connection to those isolated and stressed by the pandemic.[22] However, no statutory exemption exists for telehealth services that use copyrighted works.[23] The §110(4) exemption for nonprofit public performances of musical and nondramatic literary works does not apply to telehealth services. Qualifying nonprofit performances must not charge an admission fee and must use any proceeds for charitable purposes.[24] However, this exemption has an important limitation: it applies only to live performances; it does not apply to transmissions of performances to the public.[25] Thus, nonprofit transmissions of telehealth services do not fit within the §110(4) exemption.

Conclusion

In an attempt to "future-proof" the law, copyright now serves to restrict innovation and adaptation. Technological affordances are swallowed by copyright's exclusive rights. There are two potential solutions. First, Congress could create new exemptions for pro-social online activities. For example, the penumbra of copyright exemptions for individuals with disabilities[26] counsels in favor of a new statutory exemption for therapeutic uses of copyrighted works. Second, Congress could redefine what it means to "publicly" perform or display copyrighted works in virtual spaces. For example, small, selective, nonprofit gatherings in virtual spaces could be excluded from the definition of public.

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[1] According to the Copyright Act, to perform or display a work "publicly" means "(1) to perform or display it at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered; or (2) to transmit or otherwise communicate a performance or display of the work to a place specified by clause (1) or to the public, by means of any device or process, whether the members of the public capable of receiving the performance or display receive it in the same place or in separate places and at the same time or at different times." 17 U.S.C. § 101.
[2] 17 U.S.C. §106(4).
[3] 17 U.S.C. § 106(5). "Display" is for static images, rather than sequences. John W. Hazard, Jr., Copyright Law in Business and Practice § 4:58 (rev. ed. August 2020) ("A work is performed when there is a sequence involved, as there is with a movie, slide show, or pantomime. A display involves no sequence."); H.R. Rep. No.

1476, 94th Cong., 2d Sess. 64 (1976); S. Rep. No. 473, 94th Cong., 1st Sess. 60 (1975).
[4] A public performance turns on the word "publicly," because private performances are not within the exclusive right. A public performance may also be subject to fair use. The present analysis intentionally focuses on prima facie infringement, rather than potential defenses. Clarity on whether virtual uses are "public" would be cleaner and easier and preferrable. Importantly, it would be easier to assess ex ante, as the fair use defense is evaluated ex post on a case-by-case basis.
[5] A performance or display is public if: (1) it is at a place open to the public (i.e., a public place) or (2) is at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintance is gathered (i.e., a semi-public place).
[6] A work is also performed "publicly" (1) if it is transmitted to a public or semi-public place or (2) if it is transmitted "to the public, by means of any device or process, whether the members of the public capable of receiving the performance or display receive it in the same place or in separate places and at the same time or at different times."
[7] To "perform" a work means to recite, render, or play either (1) by doing these things directly or (2) by showing these things through the aid of a device such as a movie projector. 17 U.S.C. § 101.
[8] Howard B. Abrams & Tyler T. Ochoa, The Law Of Copyright § 5:196, Westlaw (database updated Nov. 2019) ("[A]n act so innocuous as a single individual turning on a radio in his or her own residence or automobile with no other audience is a performance. Such a performance is not an infringement because it is not done publicly, not because it is not deemed a performance.").
[9] 2 Nimmer on Copyright § 8.15 (2021) ("It was thought that to prohibit unlicensed nonprofit performances of musical and nondramatic literary works in public places such as schools and churches would constitute an undue restriction on the benefits that should be available to the public.").
[10] Section 110(1) of the Copyright Act exempts from copyright infringement performances or displays of a work (1) "by instructors or pupils"; (2) "in the course of face to-face teaching activities"; (3) "of a nonprofit educational institution"; (4) "in a classroom or similar place devoted to instruction." 17 U.S.C. § 110(1).
[11] § 110(2)(A).
[12] Technology Education and Copyright Harmonization Act
[13] § 110(2)(B). See also 2 Nimmer on Copyright § 8.15 (2021) ("Presumably, the performance of music merely as a theme song, or as background music generally, would not qualify for the [§ 110(2)] exemption because that use would neither be directly related to, nor of material assistance to, the teaching content of an instructional broadcast.").
[14] 2 Nimmer on Copyright § 8.15 (2021).
[15] 2 Nimmer on Copyright § 8.15 (2021) ("[A]lthough a straight reading of a nondramatic literary work, such as a novel, would be subject to the exemption, an acting out of the novel in dramatic form would not be exempt. Section 110(2) offered no exemption from the adaptation right, which would be infringed by such a dramatization.").
[16] See Matthew Bultman, Online Teaching During Pandemic Raises Copyright Concerns, Bloomberg Law (April 3, 2020), https://news.bloomberglaw.com/ip-law/online-teaching-amid-virus-raises-copyright-questions.
[17] Section 110(3) exempts from copyright infringement the performance or display "of a nondramatic literary or musical work or of a dramatico-musical work" (1) "of a religious nature"; (2) "in the course of services"; (3) "at a place of worship or other religious assembly." § 110(3); see also 2 Nimmer on Copyright § 8.15 (2021) ("Despite an arguable construction to the contrary, it is clear that the phrase "of a religious nature" in Section 110(3) modifies only "dramatico-musical work," so that one who performs a nondramatic literary or musical work may have the benefit of the exemption, even though such work is not in itself "of a religious nature.").
[18] H. Rep. No. 94-1476, at 84–85.

[19] H. Rep. No. 94-1476, at 84.
[20] Americans Oppose Religious Exemptions From Coronavirus-Related Restrictions, Pew Research Center (Aug. 7, 2020), https://www.pewforum.org/2020/08/07/attending-and-watching-religious-services-in-the-age-of-the-coronavirus/
[21] Church Copyright License, CCLI, https://us.ccli.com/copyright-license/
[22] Elizabeth Blair, Music Therapy Brings Solace To COVID-19 Patients and Healers, NPR.Org (Feb. 13, 2021) https://www.npr.org/sections/health-shots/2021/02/13/965644120/music-therapy-brings-solace-to-covid-19-patients-and-healers
[23] Amanda Reid, Social Utility of Music: A Case for a Copyright Exemption for Therapeutic Uses, 30 Cornell J. L. & Pub. Pol'y 1 (2020).
[24] 17 U.S.C. § 110(4).
[25] 2 Nimmer on Copyright § 8.15 (2021) ("If the audience is not present where the performance occurs, but receives the performance by a broadcast or other transmission, the [§110(4)] exemption does not apply.").
[26] E.g., 17 U.S.C. § 110(8) (exempts the transmission of a nondramatic literary work for people with disabilities), § 110(9) (exempts the transmission of certain dramatic literary works for people with disabilities); §121 (exempts reproduction and distribution of literary and musical works for people with disabilities).

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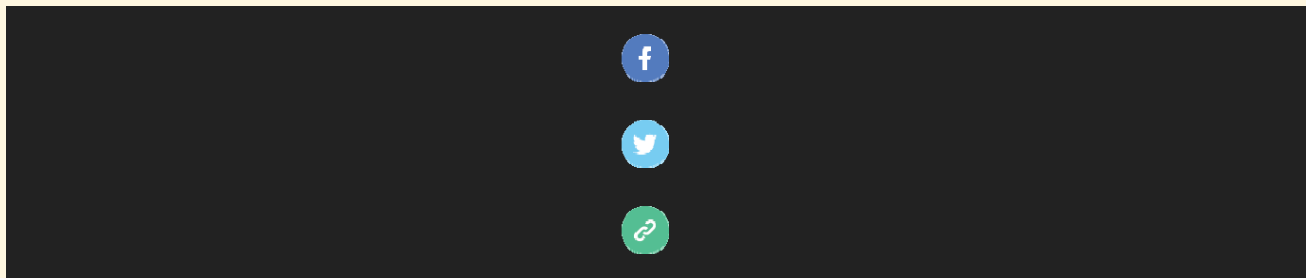

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