

# Media Law Notes

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Law and Policy Division, AEJMC

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\* \* \* See Page 7 for the proposed constitution and bylaws of the AEJMC Law and Policy Division \* \* \*

## Head Notes

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Mass communication researchers often comment on and critique creative works protected under copyright.

For example, a new media researcher might wish to compare web news designs by reproducing screen shots in a published article. A visual media scholar may reproduce and critique print advertisements.

These actions would seem clearly within the copyright fair-use provisions of 15 U.S.C. § 107, but some content creators or owners could try to use the exclusive rights of copyright (including reproduction and distribution) to effectively exercise a

veto over a scholar's message. Recently, I heard a Ph.D. student describe how his university's overly cautious intellectual property policies prevented him from engaging in legally permissible fair use for research and publication.

The student studied visual images in mass media and wanted to include copies of the images, which constituted the bulk of his data. But a careful reading of university policy made clear that the images could not be included because they were protected by copyright. Instead, the student had to place them in a file in his department office. He worried that nobody would understand the dissertation because the data was missing, and he doubted that many people would take the trouble to travel to his department office to view the data.

Further, the student ran into problems when submitting and publishing a journal article based on his dissertation. Journal editors told him he would have to secure written permission from the images' creators, even though the student was confident his use was permitted by the Copyright Act even without a license.

Perhaps this is an isolated situation. I am interested in finding out if any AEJMC Law and Policy members have personally experienced something similar in their own

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## Panel Preview: Twenty Years of 'Personal Privacy':

The Legacy of *Department of Justice v. Reporters Committee for Freedom of the Press*

Jane E. Kirtley  
Silha Professor of Media  
Ethics and Law  
University of Minnesota

The *DOJ v. Reporters Committee* case has been an albatross around my neck ever since it was decided 20 years ago. It's an unfortunate part of my legacy from my 14 years as Executive Director of the RCFP, even though it began long before I joined the non-profit legal defense organization in 1984.

It started with what CBS reporter Bob Schackne thought was an innocuous Freedom of Information request for the Medico brothers' criminal history "rap sheets" maintained in the FBI's centralized computerized repository. The Pennsylvania State Crime Commission had identified the Medicos as operators of a legitimate business dominated by organized crime, implicated in the Daniel Flood government contracting scandal.

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# Teaching Competition Results

By Dan Kozlowski  
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Our teaching ideas competition was a success! Many thanks to those of you who submitted an idea. In total, we received nearly 15 superb ideas from professors who clearly care about good teaching and who work hard to engage and challenge their students. Alas, we couldn't award them all. Here are summaries of the four winning submissions:

## First place: Blogging and the First Amendment



Professor Steven Helle has found success incorporating blogging assignments into his communication law course. He spends the first half of the semester discussing First Amendment history, cases, values, and contemporary problems. During the latter half of the semester, he requires each student to write six to eight blog posts on any free speech or press topic of his/her choice. Each post must cite four to five sources and be at least 500 words long. Helle describes the posts as "research papers with an attitude." Students are also then expected to comment on two other students' blog posts each week, one assigned and one at their discretion. Helle evaluates each post and admits the grading can be time-consuming. But he's found that students relish the assignments. The idea has worked "beyond my

wildest dreams," Helle said. "Every week is a First Amendment feast."

## Second place: Multimedia Course Project for the Mass Comm Law Survey Class



Associate Professor Robert Kerr faces a quandary not uncommon in schools of journalism and mass communication: He teaches large sections – more than 100 students – of a mass communication law course that is required of each of the majors (or concentrations) in the school. How does a teacher best engage a class of students with such a wide range of professional interests? Kerr devised a plan that would require students to utilize the specialized skills they develop in their respective majors in order to examine media law topics via a multimedia project. So, for example, advertising and public relations students in the class work in teams to produce campaigns that heighten awareness, encourage change, and/or communicate other important messages regarding media law. Journalism students produce print or video stories that focus upon an important media law controversy. And professional writing majors write a piece (e.g., a short story) that focuses upon or utilizes in an interesting way an important aspect of media law. Kerr said the approach has raised the level of enthusiasm and energy in the class.

**We had a tie for third place:** (Continued on page 3)

## Colleague Updates

*This section of Media Law Notes will highlight recent accomplishments by AEJMC Law Division members.*

✕ **Adedayo L. Abah** was tenured and promoted to Associate Professor at Washington and Lee University, Department of Journalism and Mass Communications.

✕ **Mark Arbuckle** at Pittsburg State University in Kansas published an article titled "The Evolving 'Communications Marketplace': Rethinking Broadcast Fairness Two Decades After Syracuse Peace Council" in *Media Law and Policy*, Vol. 18 No. 1 (Fall 2008). The issue was published in early spring.

✕ **Larry Burriss** of Middle Tennessee State University, published the following papers during the past academic year: in February 2009, "The Role of Law in Adolescent Online Social Communication and Behavior," in R. Zheng, J. Burrow-Sanchez, J., & C. Drew, *Adolescent Online Social Communication and Behavior: Relationship Formation on the Internet* (in print);

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*Teaching Comp. Cont'd...***Third place:  
Using Literary Works to  
Teach Mass Media Law**

Associate Professor John Bender finds that, from a pedagogical perspective, factual situations in published court opinions are typically presented in a manner that strips them of much of their emotional context. The situations described in court opinions are also already resolved, and Bender said young students almost reflexively accept a court's decision as correct. To get around those shortcomings, Bender turns to literary works as the basis for an innovative assignment in his media law course.

Literary works, Bender said, can present issues in media law in ways that preserve both the immediacy of the situation and the emotional stakes involved in cases. The characters in such works are usually interesting and fully developed, Bender said, and the situations are unusual and rich with complexities and ambiguities. Bender said these factors challenge students to think through the principles of media law they have learned in the course and then apply them to situations that may resemble the ones students will encounter after they graduate. For the last two semesters, Bender has used Zoe Heller's novel "What Was She Thinking? [Notes on a Scandal]."

Bender said the novel presents situations that raise interesting questions about how privacy torts would apply if one of the characters in the novel were to publish a manuscript that reveals intimate details about another character's affair and family life. As part of the assignment, six students serve as attorneys for a hypothetical case, three each for the plaintiff and defendant. Each side prepares

briefs (the plaintiff's side, for instance, argues why particular passages in the manuscript are actionable) and then engages in oral arguments.

The remaining students in the class act as judges and write a paper deciding which, if any, of the contested statements satisfy all of the elements of privacy law. Bender said the assignment seems to "engage [students] emotionally and intellectually to a greater extent than other assignments I have used."

**Third place:  
First Amendment in Practice:  
Free Expression & Local  
Action**

Alarmed by polls that show Americans know more about "The Simpsons" than about the First Amendment, Associate Professor Brian Carroll created an assignment that asks each of his students to thoughtfully put the First Amendment into practice. The core of the graded work in his freedom of expression course is a two-stage, course-long project that requires students first to research a cause or issue or question about which they deeply care and, then, to develop a multi-pronged communication strategy for raising awareness of their cause or issue.

One student, for example, endeavored to raise college students' awareness of media consolidation. First, she researched the issue extensively. Her multi-pronged communication strategy then involved her hosting a house party – she invited friends and acquaintances – during which she gave a brief presentation on media consolidation and its corrosive effects. She also wrote letters to her congressperson and to the campus newspaper. Carroll said he hopes the assignment makes the First Amendment "real and

empowering, even exhilarating" for students as they put the freedoms the amendment protects into practice.

*We'll post these ideas in their entirety on our division's Web site (<http://aejmc.net/law/index.html>). We'll also award the winners their certificates and prize money during our AEJMC convention business meeting.*

*See you in Boston!*

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*Colleague Updates Cont'd...*

in December 2008, "Legal Research" in S. Zhou & D. Sloan, *Research Methods in Communication* (Northport, Alabama: Vision Press); in December 2008, "Television in Middle Earth: The Palantiri and the Mirror of Galadriel," *Amon Hen: The Bulletin of the Tolkien Society*, No. 214; and, in October 2008, "Gender Differences Related to Coorientation Discrepancy in NASA Space Photography," *Visual Communication Quarterly*, Vol. 15 No. 4.

✕ **Nancy C. Cornwell**, Associate Professor and Chair, Department of Television-Radio, Roy H. Park School of Communications, Ithaca College, was promoted to full professor.

✕ **David Cuillier**, an assistant professor in the School of Journalism at the University of Arizona, took first place in the AEJMC Mass Communication and Society Division's "Promising Professor" faculty competition. The competition awards overall teaching excellence based on teaching ideas and class exercises.

*(Continued on page 4)*

*Colleague Updates Cont'd...*✕ **Victoria Eckstrand**

of Bowling Green State University, received tenure and was awarded an in-house fellowship at BGSU's Institute for Cultural Studies where she will work on a study of Ohio's role in the formation of legal protection for anonymous speech, work which she hopes will turn into a broader look at the culture of anonymous speech.

✕ **Bill D. Herman**

earned his Ph.D. (May 2009) from the Annenberg School for Communication, University of Pennsylvania. His dissertation, "The Battle Over Digital Rights Management: A Multi-Method Study of the Politics of Copyright Management Technologies," is available at: [http://papers.ssrn.com/abstract\\_id=1357203](http://papers.ssrn.com/abstract_id=1357203). This fall, he will be promoted from Instructor to Assistant Professor in the Film and Media Studies department at Hunter College.

✕ **Beverly G. Merrick**

of the Mass Communication Department at the United Arab Emirates University, presented "The Five-Card Subliminal Magic Thinking Method" at the 16th Annual International Learning Conference at Barcelona, Spain. This method has been a highly successful pre-writing exercise adapted from workshops of the National Writers Institute, a workshop strategy utilized by Chris Burham, of New Mexico State University. Dr. Merrick uses a modified method with persons of all ages, from aspiring poets to business leaders who want to communicate better with colleagues in the workplace.

✕ **Cathy Packer**

of the University of North Carolina at Chapel Hill has been promoted to full professor and named faculty director of the UNC Center for Media Law and Policy. The Center, a collaboration between the UNC School of Journalism and Mass

Communication and the UNC School of Law, is a forum for study and debate about the important media law and policy issues facing North Carolina and the nation.

✕ **Ruth Walden**

of the University of North Carolina at Chapel Hill, has been appointed director of the UNC Center for Faculty Excellence. The CFE was established in 2008 to provide professional development support to UNC faculty in three key areas: teaching, research and leadership. Walden, the James Howard & Hallie McLean Parker Distinguished Professor in the UNC School of Journalism and Mass Communication, will continue to teach half time in the School.

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*Email your personal or professional accomplishments to Professor Amy Gajda for their inclusion in the next edition of Media Law Notes. Please include you Name, School, and a brief description of your accomplishment with your submission.*

*Head Notes Cont'd...*

research, or perhaps have heard about others' experiences.

Intellectual property issues are of increasing importance in mass communication, and we are rightly concerned about not infringing others' rights. At the same time, U.S. copyright law is designed to encourage and facilitate scholarly debate that may include fair use of others' copyright-protected works.

When confronted with comparable situations, professionals in other industries—documentary filmmaking and media literacy teaching, for example—have crafted statements of best practices for fair use that clarified and defined industry standards and individual fair-use rights. In the documentary filmmaking industry, errors-and-omissions insurers have accepted the best-practice statement as a kind of safe harbor; documentary filmmakers who follow the best practices get favorable terms for insurance against copyright infringement claims.

Perhaps the time has come for communication scholars to engage in discussion of their own best practices for fair

use. Doing so may help scholars' own universities value the legality and importance of reproducing portions of or even entire creative works of others as part of the scholarly process.

Pat Aufderheide of American University and the Center for Social Media is leading such a discussion in the International Communication Association. At ICA in May I became involved with a fair-use committee that is conducting a survey of ICA members to determine what copyright issues arise in conducting mass communication scholarship.

We are interested to know whether researchers have been prevented from taking certain research approaches or using certain creative works by intellectual property owners. Although my plea here is not part of a formal survey, I ask for your informal input. **If you have experienced or been made aware of copyright issues in research such as I have described, please email me at [ed\\_carter@byu.edu](mailto:ed_carter@byu.edu).**

### *Panel Preview Cont'd...*

When Bob was denied the records by the Justice Department, the RCFP joined him in his lawsuit. It seemed like a slam dunk at the time. How could information about these guys, contained in a database consisting of law enforcement and criminal justice information that was available to the public at its source, possibly implicate “personal privacy,” as the FBI contended?

In 1989, we – and the rest of the world – found out. We learned that most of the Supreme Court regarded public access to this database as an unwarranted invasion of personal privacy. We learned that according to them, an expectation of privacy is created when public records are hard to find – a doctrine known as “practical obscurity.” And we learned that the purpose of FOIA is not to provide the public with the means to tap into the vast storehouses of government information, but rather, to allow the public to find out “what the government is up to.” In other words, if the records don’t tell you much about how the government functions, then they aren’t what FOIA was intended to open up.

The *Reporters Committee* case dealt a stunning blow to access rights, and has influenced both federal and state open government policies. It has been construed by some courts to apply to judicial as well as executive branch records. And it has opened the door to ever-more expansive interpretations of the privacy exemptions to FOIA.

At this PF&R session, a distinguished panel will look back at the *Reporters Committee* case, examining the theories and jurisprudence that contributed to its outcome. We will consider its legacy during the past 20 years, including Congressional attempts to modify its impact, and speculate about how it is likely to influence information policy for the Obama Administration.

Panelist **Daniel J. Metcalfe** was the director of DOJ’s Office of Information and Privacy from 1981

until 2007. During that time, he advised all federal agencies on all aspects of FOIA administration and supervised the government’s defense of more than 500 FOIA lawsuits. After his retirement from DOJ, Dan joined the faculty at American University’s Washington College of Law, where he is a Faculty Fellow and Executive Director of the Collaboration on Government Secrecy.

Dan will talk about how the decision prompted a “sea change” in privacy law, and how DOJ attempted to construe the “practical obscurity” concept and reconcile the ruling with the Privacy Act’s disclosure provisions. Dan will also share some intriguing tidbits about the high court’s decision-making process that he and his law students unearthed while reviewing one of the Justice’s papers in April 2009.

Panelist **Bill Loving**, chair of the Journalism Department at Cal Poly – San Luis Obispo and a litigant in state open records cases, will be representing our co-sponsor, the History Division. Bill takes the view that the ruling was “no surprise” given the high court’s reluctance to recognize a constitutional right of access to executive branch information and its reluctance to support disclosure of “private information” absent a compelling reason to do so. He will try to place the case in the context of the privacy jurisprudence at the time.

Panelist **David Schulz**, partner in the law firm Levine Sullivan Koch & Schulz, L.L.P., has been a litigator representing journalists and news organizations for more than 25 years. A long-time advocate for open government on behalf of The Associated Press, he has most recently represented the news service in its suit to compel the release of files relating to detainees held at Guantanamo Bay.

David will discuss how the *Reporters Committee* and subsequent cases have effectively reversed the statutory burden formerly placed on the government, forcing requesters to

demonstrate a compelling need for information and proof that its release will advance the public interest, regardless of any actual impact on a valid privacy interest.

After we spend some time considering these and other issues, we’ll invite our audience to raise their own questions about *what Reporters Committee* means for personal privacy and access in the digital age.

This panel was highlighted in the AEJMC promotional brochure sent out earlier this Spring, encouraging both privacy and open government advocates to join us for a lively discussion. The panel takes place on Friday, August 7, from 8:15 to 9:45 a.m. We wouldn’t want it to be “practically obscure.”

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## Research Line-up for Boston

*David Cuillier*  
Research Chair  
University of Arizona  
cuillier@email.arizona.edu

Government bailouts of newspapers, sex on the Internet, and legally defining bloggers are some of the great topics in this fall’s Law & Policy research paper presentations in Boston.

This year’s paper competition was fierce, and it was difficult to turn down so much excellent work. We had 66 eligible papers and accepted 31, for a 47 percent acceptance rate, which is more rigorous than most divisions. We appreciate the work of 66 volunteer judges who each reviewed two to four papers – most had three.

The top student paper was awarded to Dean Smith from University of North Carolina at Chapel Hill, and the top faculty paper went to Robert Drechsel from the University of Wisconsin-Madison. The University of Florida had six papers and five came from UNC (don’t those two schools ever stop cranking out good scholarship?).

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# Complete Boston Research Line-up

## The visible hand: Failings and opportunities in government regulation of advertising, broadcast and newspaper survival

Wednesday, August 5, at 8:15 a.m. to 9:45 a.m.

Moderating/Presiding: Courtney Barclay, Syracuse

Discussant: Benjamin Bates, Tennessee-Knoxville

- *Bursting the Bubble: Complaints about Soap Operas to the Federal Communications Commission, 2004-2008*, Marsha Ducey, College at Brockport (SUNY)
- *Audience Measurement, the Diversity Principle, and the First Amendment Right to Construct the Audience*, Philip Napoli, Fordham
- *Truth be Told: An Analysis of FDA Interpretation of "True Statement" Regulations for DTC Advertising*, Sheetal Chhotu-Patel, North Carolina at Chapel Hill
- *Lies, Damn Lies and Statistics: Developing a Clearer Assessment of Market Penetration and Broadband Competition in the United States*, Rob Frieden, Penn State\*
- *Bailing Out the Print Newspaper Industry: A Not-So-Joking Public Policy & First Amendment Analysis*, Clay Calvert, Florida  
\* Third place faculty award

## The Wild World Web: Sorting through privacy, confidentiality, libel, and other legal quagmires of the Internet

Thursday, August 6, at 11:45 a.m. to 1:15 p.m.

Moderating/Presiding: Nikhil Moro, North Texas

Discussant: W. Wat Hopkins, Virginia Tech

- *We're All Publishers Now: A New Look at Publishing in the Digital Age*, Rich Powell, Indiana
- *Sex, Lies and the Internet*, Robert Richards, Penn State
- *Sexual Speech on Internet Blogs and the Privacy Tort of Disclosure of Private Information*, Kearston Wesner, Florida
- *We All Need Somebody To Lean On(Line): Can Promises of Confidentiality Protect Digital Self-Disclosure?* Woodrow Hartzog, North Carolina at Chapel Hill
- *Bloggers as Limited-Purpose Public Figures: New Standards for a New Media Platform*, Amy Kristin Sanders and Sarah Arendt, Minnesota

## Scholar-to-scholar poster session

Friday, August 7, at 12:15 p.m. to 1:30 p.m.

Discussant: Paul Siegel, Hartford

- *American Exceptionalism, The French Exception, and Harmonization of International Intellectual Property Law*, Leo Eko, Iowa
- *Using social frameworks: Incorporating word-picture juxtaposition research into libel law*, Tom Grimes, Texas State, Robert Drechsel, Wisconsin-Madison, and Amy Reynolds, Indiana
- *Still Have a Ticket to Ride (Along): An Examination of Media Joint Activities with Law Enforcement*, Jasmine McNealy, Florida
- *The Right to Know, "Special Privileges" and Institutional Constraints: A Comparison of Access Cases*, Derigan Silver, Denver
- *Do We Still Need Dignity: Hate and Dignity in the United States and Germany*, Michael D. Todd, Penn State
- *Information-Privacy Rights in International Human Rights Law*, Cheryl Ann Bishop, Quinnipiac
- *Gate keeping the gatekeepers: International Community and Freedom of Information in Kosovo*, Lindita Camaj, Indiana

## Muzzled in America: Declining First Amendment rights for free speech and information gathering

Friday, August 7, at 5:15 p.m. to 6:45 p.m.

Moderating/Presiding: Erik F. Ugland, Marquette

Discussant: Mark Goodman, Kent State

- *The Greatest First Amendment Victory Harry A. Blackmun Ever Lost: How the U.S. Supreme Court Decided Gannett Co. Inc. v. DePasquale*, John Bender, Nebraska-Lincoln
- *Tinker's Midlife Crisis at 40: Tattered and Transgressed But Still Standing*, Clay Calvert, Florida
- *Contrasting Concurrences of Clarence Thomas: Deploying Originalism and Paternalism in Commercial and Student Speech Cases*, Clay Calvert, Florida, and Matthew Bunker, Alabama
- *Defining Matters of Public Concern Through State Court Decisions on Statutory Anti-SLAPP Motions*, Autumn Shafer, North Carolina at Chapel Hill
- *The Declining First Amendment Rights of Government News Sources*, Robert Drechsel, Wisconsin-Madison\*

\* First place faculty paper

## Reporter's privilege: Defining who should be protected and examining new ways of keeping journalists out of jail

Saturday, August 8, at 8:15 a.m. to 9:45 a.m.

Moderating/Presiding: Michele Kimball, South Alabama

Discussant: Anthony Fargo, Indiana

- *Statutory Shield Laws in Constitutional Orbits: Rise of the 'Covered Person' Issue*, Dean Smith, North Carolina at Chapel Hill\*
- *Garland v. Torre and the Birth of Reporter's Privilege*, Stephen Bates, Nevada-Las Vegas\*\*
- *Defining Journalists: The Application of the Definition of "Journalist" to Bloggers*, Shin Haeng Lee, Indiana
- *Challenging Civil Contempt: An alternate approach to keep journalists out of jail*, Daxton Stewart, Texas Christian  
\* Top student paper  
\*\* Second-place faculty paper

## Solutions for secrecy: Judicial and statutory avenues for fostering freedom of information

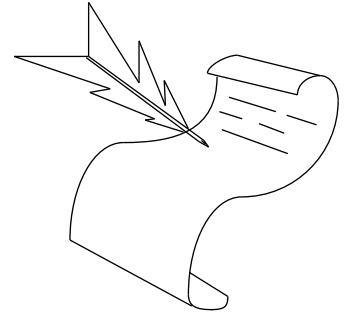
Saturday, August 8, at 10 a.m. to 11:30 a.m.

Moderating/Presiding: Jeannine Relly, Arizona

Discussant: Charles Davis, Missouri-Columbia

- *Access to Information as a Right: South Korea's 20-Year Experience*, Kyu Ho Youm, Oregon
- *False Sense of Security: The impact of FERPA's campus crime provision on the release of student records related to campus safety*, Jennifer Harlow, North Carolina at Chapel Hill
- *Punishment for Shade: An Analysis of Penalties and Remedies for Violations of Open Meetings Laws Across the Country*, Adrianna C. Rodriguez and Laurence B. Alexander, Florida
- *Power, National Security and Transparency: Judicial Decision Making and Social Architecture Theory in the Federal Courts*, Derigan Silver, Denver
- *Clearing Up the FOIA Transparency Question: How Congress Can Break the Coming Deadlock*, Benjamin Cramer, Michael D. Todd, and Martin E. Halstuk, Penn State

# Proposed Constitution and Bylaws of the AEJMC Law and Policy Division, to be considered for adoption at the Members' Meeting on August 7, 2009



Note from the Division Head:

*When I became Law and Policy Division head in October 2008, I attempted to locate the Division's Constitution and By-Laws. I am still looking. If anyone has a copy, please let me know.*

*Because I could not locate them, I asked Law and Policy Division officers to assist me in drafting a new set. The draft was based on similar documents in other AEJMC divisions, but it also accounts for the unique characteristics of the Law and Policy Division.*

*I would appreciate all Division members taking a look at the draft and submitting input to me at ed\_carter@byu.edu. If there is support in the Division, I propose we consider adopting these at our Division business meeting in Boston on Aug. 7.*

*I would like to see the Division's Constitution and By-Laws permanently posted on our website so we can be as transparent, open and accessible as possible. Wat Hopkins is working to compile and post a set of similar policies for Communication Law & Policy.*

## CONSTITUTION

### Article I: Name and Organization

As part of the Association for Education in Journalism and Mass Communication ("AEJMC"), the Law and Policy Division ("Division") is organized under authority of and in conformity with Article 5 of the AEJMC Constitution and Article 5 of the AEJMC Bylaws.

### Article II: Object

In accordance with the AEJMC Constitution, Article I, Section 3, the object of the Division is to support and advance teaching, research or academic inquiry, and public service in communication law and policy. The Division aspires to play a particularly effective role within AEJMC to "support freedom of communication consonant with the ideal expressed in the First Amendment of the U.S. Constitution." (See AEJMC Constitution, Article I, Section 2).

### Article III: Membership

Regular membership in the Division shall be restricted to AEJMC members in good standing who are also dues-paying members of the Division. With regard to membership, programming and other pursuits, the Division is committed to inclusiveness and diversity in gender, race and culture. The Division will not discriminate on the basis of gender, race, religion, ethnic origin, physical disability or sexual orientation. (See AEJMC Constitution, Article I, Section 5).

### Article IV: Officers

The executive officers of the Division are the Division Head, Vice Head/Program Chair, Research Chair and Clerk/Newsletter Editor. Executive officers' terms begin October 1 and conclude September 30. The executive officers shall constitute the Executive Board of the Division and shall supervise the affairs of the Division, fix the time and place of meetings, make recommendations to the Division membership and perform other duties as prescribed in the Bylaws and as necessary and proper for the functioning of the Division.

After nomination and second, the Clerk/Newsletter Editor shall be elected by a majority of the members during the annual Division members' meeting or business meeting at the AEJMC convention. Subsequently, the order of succession shall be: the Clerk/Newsletter Editor becomes Research Chair the following year; the Research Chair becomes Vice Head/Program Chair the following year; the Vice Head/Program Chair becomes Division Head the following year.

Should any executive officer be unable to complete a term of service or be unable or unwilling to succeed in the manner described above, the Division Head may appoint another member in good standing as a replacement.

Additional officers of the Division are the Professional Freedom & Responsibility Chair, the Teaching Standards Chair and the Webmaster. These officers' terms begin October 1 and conclude September 30.

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# Constitution and Bylaws Continued...

After nomination and second, the Professional Freedom & Responsibility Chair, the Teaching Standards Chair and the Webmaster shall be elected by a majority of the members during the annual Division members' meeting or business meeting at the AEJMC convention. There is no automatic succession among these officers. An individual may serve multiple consecutive terms or non-consecutive terms as Professional Freedom & Responsibility Chair, Teaching Standards Chair or Webmaster.

Duties of the executive officers and other officers of the Division are listed in the Division Bylaws, but officers may fulfill additional duties as necessary and approved by the Division Head.

## Article V: Meetings

The Division's annual business or members' meeting shall take place during the annual convention of AEJMC for the purposes of electing new officers, receiving officer and committee reports, making presentations, holding discussions related to Division business, responding to queries from Division members and conducting any other Division business. A quorum at the annual meeting shall consist of those Division members physically present. Members may vote on any issue or election by proxy if they submit a typewritten statement on official school letterhead to the Clerk/Newsletter Editor prior to the vote.

In consultation with the Executive Board, the Division Head may call special members' meetings as necessary.

The outgoing Executive Board shall meet at the annual AEJMC convention prior to the business or members' meeting. The incoming Executive Board may meet at the annual convention after the business or members' meeting.

## Article VI: Committees

In consultation with the Executive Board, the Division Head may appoint ad hoc committees as necessary to the work of the Division.

In consultation with the Division Head, the Professional Freedom & Responsibility Chair, the Teaching Standards Chair and the Webmaster may constitute committees in their respective areas to assist with business in those areas.

Unless approved otherwise by the Division Head, members of Division committees shall be members in good standing of AEJMC and the Division.

## Article VII: Parliamentary Authority

The rules contained in the current edition of Robert's Rules of Order shall govern the Division in cases in which they are applicable and are not inconsistent with this Constitution, the Division Bylaws or any special rules the Division shall adopt. A majority of the Division at the annual business or members' meeting shall have authority to adopt special rules.

## Article VIII: Publications

The official scholarly publication of the Division shall be *Communication Law & Policy*. The editor of *Communication Law & Policy* shall be elected at the annual business or members' meeting to a three-year renewable term. The editor of *Communication Law & Policy* shall have authority to select editorial board members and reviewers, and the editor shall have final authority over all editorial decisions and other business of the journal.

The Division newsletter is *Media Law Notes*, which shall be overseen by the Clerk/Newsletter Editor and published regularly.

The Division website shall endeavor to publish and archive relevant Division news and information.

## Article IX: Amendments

The Division Constitution and Division Bylaws may be amended by a majority of Division members at the annual business or members' meeting. Proposed amendments shall be submitted by members 30 days in advance of the annual business or members' meeting to the Division Head, who shall promptly publish and distribute them to the Division membership for consideration prior to the meeting.

## BYLAWS

### Article I: Name and Organization

Division dues shall be established by the Executive Board and approved by a majority vote of the Division membership at the annual business or members' meeting. The Division Head shall be responsible to work with AEJMC permanent staff to oversee the Division budget. Division funds may be expended for Division activities deemed appropriate by the Division Head and Executive Board, but the Division account must have a positive balance each October 1. Executive officers should seek to use Division funds wisely and keep funds in reserve for future activities of the Division.

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# Constitution and Bylaws Continued...

## Article II: Object

Through its teaching, research and scholarship, the Division seeks to support and promote the goal of freedom of expression. However, in conjunction with AEJMC Constitution Article I, Section 4, no substantial part of the activities of the Division shall consist of carrying on of propaganda or attempting to influence legislation. The Division may join or submit amicus curiae briefs in cases relevant to the objective of the Division.

## Article III: Membership

Only Division members may vote in officer elections, submit amendments to the Division Constitution and Bylaws, serve as officers or journal editor, or (unless approval is granted by the Division Head) serve on committees.

## Article IV: Officers

Officers of the Division shall not receive monetary compensation for their service, though they may be reimbursed for Division business in conjunction with AEJMC policies. Some travel costs for Division officers may be covered by Division funds in accordance with AEJMC policies. For example, Division executive officers required to travel to the mid-year programming meeting may request Division funds as approved by AEJMC and the Division Head. **All officers of the Division shall provide relevant information to the Division Head for the Division's annual report.**

§ The Division Head shall serve as the Division's leader and administrator. Duties include but are not limited to presiding over the annual business or members' meeting, attending the mid-year programming meeting of AEJMC to participate in convention program planning, writing official Division reports (including the annual report to AEJMC), arranging special events, coordinating among Division officers, appointing special committees, serving as director of the Executive Board and attending meetings of AEJMC's Council of Divisions. The Division Head shall perform other duties as necessary.

§ The Vice Head/Program Chair shall stand in for the Division Head in any of the Division Head's responsibilities if the Division Head is not available. The Vice Head/Program Chair's duties include but are not limited to generating and coordinating the Division's non-research conference programming (including soliciting panel proposals, finding co-sponsoring AEJMC divisions or interest groups, notifying panel proposers of panels selected, requesting funds from AEJMC for speaker travel, and writing program copy on panel sessions), attending the mid-year programming meeting of AEJMC to participate in convention program planning, seeing that all non-research panels at the convention run smoothly and that all presenters' needs are met, and attending meetings of AEJMC's Council of Divisions.

§ The Research Chair's duties include but are not limited to organizing the research competition and research sessions for the annual national convention. This may include

drafting and advertising the call for papers for the national conference, recruiting reviewers to judge the competition, assigning papers to judges, compiling the winning papers, and coordinating the research panels at the conference by organizing moderators and discussants. The research competition for the AEJMC Southeast Colloquium may be coordinated by a different person appointed by the Division Head, or it may be coordinated by the Division Research Chair.

§ The Clerk/Newsletter Editor's duties include but are not limited to producing four editions of *Media Law Notes* during the Clerk's term and recording the annual business or members' meeting minutes. In order to produce *Media Law Notes*, the Clerk/Newsletter Editor may solicit, edit and publish articles from Division officers and members or others deemed appropriate.

§ The Teaching Standards Chair contributes to the Division's discussion about the improvement of communications law and First Amendment education. The Teaching Standards Chair's responsibilities include but are not limited to proposing and implementing teaching panel proposals for the annual AEJMC national convention, writing occasional teaching columns for the Division's newsletter, *Media Law Notes*, and posting appropriate teaching resources (e.g., Web links, teaching ideas) to the "teaching" page of the Division's Web site.

§ The duties of the Professional Freedom & Responsibility Chair include but are not limited to maintaining a high level of professional freedom and responsibility activity within the Division in accordance with AEJMC organization policy. Professional freedom and responsibility is defined by AEJMC as programming in the area of free expression; ethics; media criticism and accountability; racial, gender and cultural inclusiveness; and public service. The Professional Freedom & Responsibility Chair shall also assist with PF&R programming during the annual convention and during the year and encourage multi-division activity on this subject, report those activities to the Division Head for the Division's annual report to AEJMC, and contribute to the discussion of professional freedom and responsibility in *Media Law Notes*.

§ The Webmaster's duties include but are not limited to maintaining a current, attractive and useful website for the Division, uploading the quarterly issues of *Media Law Notes* to the site, adding and maintaining links on the "Resources" page and front page, and adding whatever content is requested by other Division officers.

§ Each officer of the Division shall be responsible, at the conclusion of his or her term in a particular officer position, to review and update the description of Division officer responsibilities. These descriptions may be transmitted from one officer to another in conjunction with the October 1 transition and may also be published on the Division website.

## Bibliography

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### Freedom of the Press

**Skonicki, T. (2009). "Over and Out: Examining How Cognitive Radio Will Affect First Amendment Restrictions on Broadcast Media." 16 Villanova Sports and Entertainment Law Journal 225.**

Cognitive radio has the ability to transform a "scarce" spectrum into a virtually limitless spectrum. Broadcast media will, therefore, become analogous to print media in that both can be distributed in limitless quantities. The rationale provided for the current differentiation in First Amendment treatment between broadcast and print media is that there is, in fact, a limit to how much an individual can communicate via broadcast media because the airwaves are inherently limited. Due to this limitation, the government currently places more restrictions on what an individual can and cannot broadcast, as opposed to what an individual can and cannot publish. With cognitive radio and the commons approach to licensing, however, virtually no limits will exist to the amount able to be broadcast over the airwaves. Therefore, once cognitive radio is fully implemented and a commons approach to licensing is introduced, broadcast media should enjoy the same freedoms print media currently enjoys.

### Free Speech

**Bentley, C. G. (2009). "Student Speech in Public Schools: A Comprehensive Analytical Framework Based on the Role of Public Schools in Democratic Education." 2009 Brigham Young University Education and Law Journal 1.**

Ever since the Supreme Court's decision in *Tinker v. Des Moines Independent Community School District*, the fact that public school students retain First Amendment speech rights while in school has become generally--although not

universally--accepted. Nevertheless, the problem of how to balance concern for student expression with the teaching and discipline requirements of public schools remains a thorny problem for which the Supreme Court has been unable to devise a comprehensive and coherent answer. Notwithstanding the continued assertion of the few who argue that the First Amendment provides no protection for student speech in public schools, the difficult question is no longer whether public school students have First Amendment free speech rights while in school, but what is the nature and extent of the rights that accompany them past the schoolhouse gate?

**Doering, S. L. (2009). "Tinkering With School Discipline in the Name of the First Amendment: Expelling a Teacher's Ability to Proactively Quell Disruptions Caused by Cyberbullies at the Schoolhouse." 87 Nebraska Law Review 630.**

Americans have the right to "criticize . . . and that means not only informed and responsible criticism but the freedom to speak foolishly and without moderation." When that criticism invades the schoolhouse, however, berating teachers and fellow students, causing a material disruption to the educational mission, and infringing upon students' and teachers' rights, courts must remain aware that "[t]he education of the Nation's youth is primarily the responsibility of parents, teachers, and state and local school officials, and not of federal judges." Consequently, when confronted with First Amendment challenges to school disciplinary action imposed as a result of a cyberbully's intrusion upon those fundamental principles, courts must be mindful that "[t]o elevate such impertinence to the status of constitutional protection [is] farcical and would indeed be to 'surrender control of the American public school system to public school students.'" In such cases, "those who run public schools should be the judges, . . . not the courts. The quicker judges get out of the business of running schools, the better."

**Fee, J. (2009). "The Pornographic Secondary Effects of Doctrine." 60 Alabama Law Review 291.**

The secondary effects doctrine has made a muddle of First Amendment law. The doctrine formally holds that a speech regulation will be treated as content-neutral if its purpose is to control the secondary effects of speech, even if it facially discriminates according to speech content. It pretends to be a general First Amendment doctrine, but in practice it is all about regulating pornographic expression. This Article aims to re-evaluate the secondary effects doctrine in a way that is more transparent. Appreciating the functional basis of the secondary effects doctrine is useful for understanding the doctrine's limitations, as well as for analyzing new types of regulation that may arguably fall within its scope. It also provides important lessons for general First Amendment theory, including how cost-benefit analysis affects the constitutional rules regarding content discrimination and how the purpose of a regulation affects the level of scrutiny that courts apply.

**Horowitz, S. J. (2009). "A Free Speech Theory of Copyright." 2009 Stanford Technology Law Review 2.**

Copyright is a system of federal regulation that empowers private actors to silence others, yet no one seriously doubts that copyright is consistent in principle with the First Amendment freedom of speech. Scholars and courts have tried to resolve the tension between exclusive rights in expression and free speech in one of two ways: some appeal to copyright's built-in accommodations to suppress any independent First Amendment analysis, while others apply standard First Amendment tests to evaluate whether and where copyright becomes an unconstitutional burden on speech. Neither of these approaches properly appreciates the constitutional balance struck at the Framing between the Copyright Clause and the First Amendment. This Article develops a free speech theory of copyright informed by this balance and advocates thinking of the Copy

*(Continued on page 11)*

## *Bibliography Cont'd...*

right Clause's limits as free speech limits, giving them the force of an individual right.

**Hutchens, N. H. (2008-2009). "Silence at the Schoolhouse Gate: The Diminishing First Amendment Right of Public School Employees." 97 Kentucky Law Journal 37.**

The Supreme Court's statement that along with students, teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate" is an often discussed premise in federal court decisions. But, the ever increasing reality is that teachers, along with administrators and other staff in public schools, increasingly possess diminished protection under the First Amendment. *Garcetti v. Ceballos*, which dealt with the First Amendment speech rights of all public employees, marks the erosion of First Amendment rights for public school administrators and staff and may curtail the First Amendment rights of teachers as well.

**Skiba-Crafts, A. (2009). "Conditions on Taking the Initiative: The First Amendment Implications of Subject Matter Restrictions on Ballot Initiatives." 107 Michigan Law Review 1305.**

Nearly half of U.S. states offer a ballot initiative process that citizens may use to pass legislation or constitutional amendments by a popular vote. Some states, however, impose substantive restrictions on the types of initiatives citizens may submit to the ballot for a vote--precluding, for example, initiatives lowering drug penalties or initiatives related to religion. Ballot initiatives should qualify as protected speech, such that state restrictions on their content should trigger strict scrutiny review under the First Amendment. Ballot initiatives' interactive, communicative nature and focus on political ideas put them firmly within the doctrinal category of "core political speech."

### **Privacy**

**Blackman, J. (2009). "Omniveillance, Google, Privacy in Public, and the Right to Your Digital Identity: A Tort for Recording and Disseminating an Individual's**

**Image Over the Internet." 49 Santa Clara Law Review 313.**

Internet giant Google recently began photographing American streets with a new technology entitled Google Street View. But Google does not only record streets. Its high-resolution cameras are able to capture people, both outside, and inside of their homes through open windows, engaged in private matters. Those captured by Google's cameras are not even aware they are being recorded, as Google uses nondescript recording equipment to clandestinely record people in their natural state. Such pervasive human monitoring is the essence of the phenomenon this article has termed omniveillance. The two major privacy torts, public disclosure of private facts and intrusion upon seclusion, are concerned with balancing privacy and free speech. Yet, they are largely incapable of remedying the intrusiveness of emerging omniveillance technologies.

**Ciulli, A. (2009). "Technology Policy, Internet Privacy and the Federal Rules of Civil Procedure." 11 Yale Journal of Law & Technology 176.**

This essay advocates for a technology policy in President Barack Obama's new administration that will provide adequate privacy protection for Internet users in the civil subpoena context. Various courts have adopted different tests over the past ten years to weigh an Internet user's First Amendment and privacy rights against a litigant's right to use the court system to obtain redress for alleged injuries. There are four guiding principles that technology policy in this area should follow. This paper ultimately argues that the new administration should request that Congress amend the Federal Rules of Civil Procedure to require that federal courts nationwide apply a "summary judgment plus" test to all instances where a litigant demands an Internet user's identity or other private information as part of the discovery process.

**Kane, B. and B. T. Delange (2009). "A Tale of Two Internets: Web 2.0 Slices, Dices and is Privacy Resistant." 45 Idaho Law Review 317.**

The Internet began as a one or two-dimensional system of information and transactions. But it has morphed into a three-dimensional platform through which we participate through online shopping, email, and social networking sites sharing intimate details of our lives with e-friends. For unexplained reasons, the Internet also inspires a trust factor that otherwise does not exist outside of the online world. Unfortunately, the definition of "friends" in the Internet world is nebulous at best. A dichotomy within the law has emerged out of the continued development of the Internet as a tool of commerce, society, and interaction. Privacy, when viewed through traditional business applications of the Internet, has largely been successfully addressed through the traditional legal framework. But privacy, when viewed through emerging Internet technologies, such as social networking sites and their myriad applications and metamorphoses, has met traditional legal regulation with stiff resistance.

**Millier, S. L. (2008-2009). "The Facebook Frontier: Responding to the Changing Face of Privacy on the Internet." 97 Kentucky Law Journal 541.**

In the digital world of online social networks, users have grown accustomed to the free flow of information and expansive opportunities for self-expression. The fundamental problem with online social networks is the dichotomous demands of users: "People want access to all the information around them, but they also want complete control over their own information." People's expectations of privacy are transforming, and as social networks like Facebook scramble to react to these changes, privacy law in the United States has been at a relative standstill. As the Internet and social networking sites continue to expand and become more integral to modern life, state legislatures have recognized the problem and have begun to take action. These efforts are important progress in the right direction; however, given the global nature of the problem, it is important that the federal government take action.

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